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ABSTRACT

This document compiles materials and bibliographic references to assist national high school debaters in researching the 1989-1990 topic, "How Can the Federal Government Reform Prisons and Jails in the United States?" Materials are organized into a section of general materials and around each of three official debate propositions within the topic: (1) Resolved: That the Federal Government should adopt a nationwide policy to decrease overcrowding in prisons and jails in the United States; (2) Resolved: That the Federal Government should enact a nationwide policy to decrease violence in prisons and jails in the ited States; and (3) Resolved: That the Federal Government should expand rehabilitation programs for convicted criminals in the United States. Excerpts from documents were selected to provide background information, an overview of the principal issues, and a balance of opposing views. A research guide and a list of relevant publications are included at the end of the volume. (DB)

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Senate/101st Congress/1st Session/Document No. 101-2

Prison Reform: How Can the Federal Government Reform Prisons and Jails in the United States?

National Debate Topic for High Schools
1989-1990

Pursuant to Public Law 88-246

Compiled by the Congressional Research Service
Library of Congress

PUBLIC LAW 88-246, 88TH CONGRESS, S. 2311, DECEMBER 30, 1963

AN ACT To provide for the preparation and printing of compilation of materials relating to annual national high school and college debate topics.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Librarian of Congress is authorized and directed to prepare compilations of pertinent excerpts, bibliographical references, and other appropriate materials relating to (1) the subject selected annually by the National University Extension Association and the national high school debate topics and (2) the subject selected annually by the American Speech Association as the national college debate topic. In preparing such compilations the Librarian shall include materials which in his judgment are representative of, and give equal emphasis to, the opposing points of view on the respective topics.

Sec. 2. The compilations on the high school debate topics shall be printed as Senate documents and the compilations on the college debate topics shall be printed as House documents, the cost of which shall be charged to the congressional allotment for printing and binding. Additional copies of such documents may be printed in such quantities and distributed in such manner as the Joint Committee on Printing directs.

Approved December 30, 1963.

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FOREWORD

The 1989-1990 high school debate topic is, "How can the Federal Government reform prisons and jails in the United States?" The three official debate propositions within this topic are:

RESOLVED:	That the Federal Government should adopt a nationwide policy to decrease overcrowding in prisons and jails in the United States.
RESOLVED:	That the Federal Government should enact a nationwide policy to decrease violence in prisons and jails in the United States.
RESOLVED:	That the Federal Government should expand rehabilitation programs for convicted criminals in the United States.

In compliance with Public Law 88-246, the Congressional Research Service of the Library of Congress prepared this compilation of materials and bibliographic references to assist high school debaters in researching the topic. Excerpts from documents were selected to provide background information, an overview of the principal issues, and a balance of opposing views. We have included some materials that are not readily available in public or research libraries. In selecting items for this reader and bibliography, the Congressional Research Service (CRS) has attempted to sample the wide spectrum of opinions reflected in current literature on these questions. No preference for any policy is indicated by the selection or positioning of articles herein, nor is CRS disapproval of any policy or article to be inferred from its omission.

A research guide is included at the end of this volume; it is intended to help debaters identify further references and organizational resources on their own. Also included is a list of relevant publications that are available for purchase from the Superintendent of Documents, Government Printing Office. Some of the U.S. Government documents listed in the manual may be found in U.S. Government depository libraries, which can be identified by local public libraries. The Library of Congress cannot distribute copies of these or other materials to debaters.

The documents presented in this compilation were selected by Elizabeth S. Lane, Bibliographer, Library Services Division, with assistance from William F. Woldman, Analyst in American National Government, Government Division; Lou Fields, Legislative Attorney and Toni Drake, Paralegal Specialist, American Law Division. In addition, David Rabasca, Senior Legal Information Specialist, American-British Law Division, Law Library, assisted with the selection. Ms. Lane prepared the bibliography and guide to information sources. Production was made possible by Martha Lederer and Sherry B. Shapiro, Library Services Division.

Good luck to each debater in researching, preparing, and presenting arguments on this year's topic.

Joseph E. Ross, Director
Congressional Research Service

GENERAL MATERIALS

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Reproduced from U.S. Department of Justice. Bureau of Justice Statistics. Report to the Nation on crime and justice. 2nd ed. Washington, The Department, 1988. p. 39-53, 90-127.

Chapter III

The offender

Phyllis Jo Baunach
Patrick A. Langan
Steven Klein, The RAND Corporation

This chapter profiles arrestees and offenders with data that address such questions as—

How do we know who commits crime? What do we know about the offender? How many offenders are there?

Who is the "typical" offender? How are offenders and victims similar? How are they different?

What is the relationship between age and crime?

What are the characteristics of repeat offenders? How much crime do they account for?

Are women becoming more involved in crime?

To what extent do blacks, Hispanics, and other ethnic groups engage in crime?

What are the family, economic, and educational backgrounds of jail and prison inmates?

Is there a link between drug and alcohol use and crime? How does drug and alcohol use by offenders differ from that of the general population?

Invaluable contributions to this chapter were made by Victoria Major, Sharon Proleter, and the User Services Staff of the FBI Uniform Crime Reports Section and by James Stephan, Sophie Bowen, and Sara E. Smith of BJS.

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Who commits crime?

How do we know who commits crime?

Three major sources provide information about the kinds of persons who commit crime:

- **Official records** compiled by police, courts, jails, and prisons have the advantage that they offer information on the more serious crimes and criminals. However, these records are limited to only the crimes and criminals that come to the attention of law enforcement officials.
- **Self-report surveys**, in which people are asked whether they had committed crimes, can provide more complete information than official records about crimes and criminals whether or not they were detected or apprehended. But there is the danger that people will exaggerate, conceal, or forget offenses. Many self-report surveys are limited to people who are in correctional custody.
- **Victim surveys**, such as the National Crime Survey, obtain information from crime victims including their observations of the age, race, and sex of their assailants. Victim surveys give information not only about crimes reported to the police but also about unreported crimes. A disadvantage is that in crimes of stealth (such as burglary and auto theft) victims seldom ever see who committed the crime. Also, many victims of crimes fail to tell interviewers about being victimized by relatives and other nonstrangers.

How many criminals do we know about?

By the most conservative estimates, 36 to 40 million persons (16–18% of the U.S. population) have arrest records for nontraffic offenses. In 1983 official records covered more than 11.7 million arrests for all offenses, 224,000 jail inmates, more than 1.5 million probationers, 439,000 prison inmates, and 250,000 parolees.

Which criminals do we know the most about?

The major sources do not give uniformly complete information about every kind of offender. In particular they tell us much more about common criminals than they do about white-collar criminals.

Much of what we know about offenders and their traits is limited to the common criminals who commit the offenses of greatest concern to the public: predatory crimes such as robbery and burglary.

Offenses	Arrestees include many later released—most arrests are for less serious offenses	Jail inmates include those awaiting trial or sentencing and those serving short sentences for less serious crimes	Prison inmates are those sentenced to more than 1 year—generally for serious crimes
Murder/ manslaughter	15%	6%	18%
Sexual assault	30	3	6
Robbery	1	11	25
Assault	8	8	6
Other violent crimes		2	3
Burglary	4	14	18
Larceny-theft	11	11	5
Forgery/fraud/ embezzlement	4	5	4
Auto theft	1	2	2
Other property	3	5	2
Drugs	7	10	7
Public order	25	12	3
Driving while intoxicated	15	7	1
Number	11,945,200	223,552	274,564

Not available

Sources: FBI Crime in the United States 1985. Jail inmates, 1983, BJS Bulletin, November 1985. BJS Survey of Inmates of State Correctional Facilities, 1979, unpublished data.

What do the major sources tell us about who commits crime?

The major sources tell us which traits are more (or less) common among criminals than noncriminals. These traits hold clues for explaining why some people are more likely than others to commit crime. No single trait distinguishes all criminals.

Official records report traits of *apprehended* criminals, which may or may not be the same as those of all persons. Some observers say these traits are not similar, claiming that persons with certain characteristics (for example, blacks or males) are overarrested and overimprisoned compared with others (for example, whites or females). However, victim surveys, which provide information about more victimizations than those known to the police, find the traits of observed criminals to be generally the same as those in the official records. For example, the racial makeup of arrested persons and imprisoned persons is very similar to the racial makeup of all criminals who were seen by their victims.[1]

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Who is the "typical" offender?

Most crimes are committed by males, especially by those under age 20. About 42% of all persons arrested for UCR Index crimes in 1985 were under age 20 and almost four-fifths were males. The 1985 National Crime Survey shows that most violent offenders are perceived to be white males, but black males are perceived to be violent offenders in numbers disproportionate to their share of the population. This does not mean that persons commit crime because they are male or black.

Offenders and victims share many traits. Like victims of crime, the offenders described in arrest, jail, and prison data are predominantly male and disproportionately young and black.

What are the characteristics of arrestees and offenders in jails and prisons?

		1983					
		Index crime arrestees		Jail inmates			
	U.S. population 1980	Violent	Property	Unconvicted	Convicted	State prison inmates	Federal prison inmates
	226,545,805	443,686	1,707,434	88,120	132,620	405,312	31,926
Sex							
Male	49%	89%	78%	93%	93%	96%	95%
Female	51	11	23	7	7	4	5
Race							
White	86	51	66	54	61	51	65
Black	12	48	33	44	36	47	33
Other	2	1	2	2	3	3	3
Ethnic origin							
Hispanic	6	12	11	15	14	8	23
Non-Hispanic	94	88	89	85	86	57	77
Unknown	0	0	0	0	0	35	0
Age							
Under 15	23	5	14	*	*	0	0
15-19	9	23	32	14	11	7	0
20-29	18	43	32	53	54	56	34
30-39	14	19	13	23	24	25	40
40-49	10	7	5	6	7	8	17
50-59	10	3	2	3	3	3	7
60+	16	1	2	1	1	1	2

*Less than .5%.
Note: Percentages may not add to total because of rounding.

Sources: Statistical abstract of the United States 1981.
FBI Crime in the United States 1983.
Jail inmates 1983, BJS Bulletin, November 1985.
BJS Survey of Inmates of Local Jails 1983, unpublished data.
BJS Prisoners in State and Federal Institutions yearend 1983, unpublished data.

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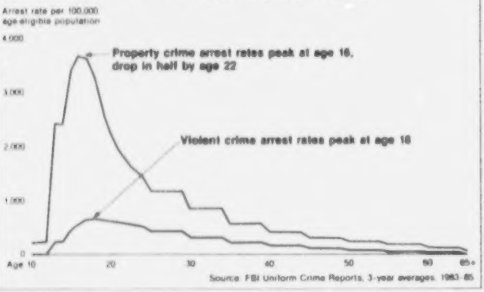
What is the relationship between age and crime?

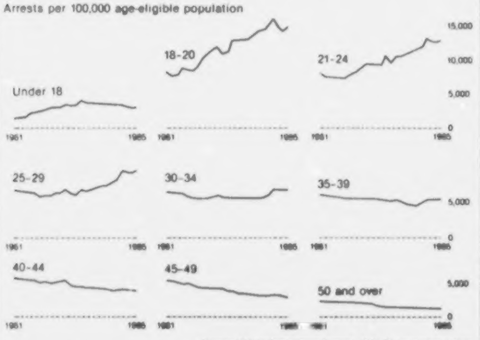
Serious crime arrest rates are highest in young age groups



Source: FBI Uniform Crime Reports, 3-year averages, 1983-85

Arrest rate trends vary by age group

Between 1961 and 1981—
- The most dramatic increases in arrest rates were for persons age 18 to 20.
- Smaller increases in arrest rates occurred for persons age 21 to 24 and age 25 to 29.
- For persons age 35 and older, arrest rates declined.
- Persons age 18 to 20 had the highest arrest rates followed by those age 21 to 24.
- Persons age 50 or older had the lowest arrest rates.



Source: FBI Uniform Crime Reports, 1961-85, unpublished data

Young people make up the largest proportion of offenders entering the criminal justice system

In 1985—
- Two-thirds of all arrests and three quarters of all UCR Index arrests were of persons under age 30.
- Arrests of youths under age 21 made up half of all UCR Index property crime arrests and almost a third of all violent crime arrests.
- Arrests of juveniles (persons under age 18) made up 17% of all arrests and 31% of all UCR Index arrests.
- During 1976-85, the number of arrests of juveniles (persons under age 18) fell by 18%, reflecting the decline in the size of that age group and a 15% drop in their arrest rate.

Participation in crime declines with age

Arrest data show that the intensity of criminal behavior slackens after the teens, and it continues to decline with age. Arrests, however, are only a general indicator of criminal activity. The greater likelihood of arrests for young people may result partly from their lack of experience in offending and also from their involvement in the types of crimes for which apprehension is more likely (for example, purse snatching vs. fraud). Moreover, because youths often commit crime in groups, the resolution of a single crime may lead to several arrests.

The decline in crime participation with age may also result from the incapacitation of many offenders. When repeat offenders are apprehended, they serve increasingly longer sentences, thus incapacitating them for long periods as they grow older. Moreover, a RAND Corporation study of habitual offenders shows that the success of habitual offenders in avoiding apprehension declined as their criminal careers progressed. Even though offense rates declined over time, the probabilities of arrest, conviction, and incarceration per offense all tended to increase. Recidivism data also show that the rates of returning to prison tend to be lower for older than for younger prisoners. Older prisoners who do return do so after a longer period of freedom than do younger prisoners.

Different age groups are arrested and incarcerated for different types of crimes

- Juveniles under age 18 have a higher likelihood of being arrested for robbery, and UCR Index property crimes than any other age group.

- Persons between ages 18 and 34 are the most likely to be arrested for violent crimes.

- The proportion of each group arrested for public order crimes increases with age.

- Among jail and prison inmates, property crimes, particularly burglary and public order crimes, are more common among younger inmates.

- Violent crimes were more prevalent among older inmates admitted to prison in 1982 but showed little variation among jail inmates of different ages.

- Drug crimes were more prevalent among inmates age 25 to 44 in both prisons and jails.

Many older prison inmates had never been to prison before

Of all persons admitted to prison after age 40, nearly half were in prison for the first time.

Inmates whose most recent admission to prison was at or after age 40 were more likely to be serving time for a violent crime than inmates who had the longest, most continuous criminal careers. The seriousness of their offenses alone probably explains why so many inmates were incarcerated for the first time at or after age 40.

Persons who were returning to prison at or after age 40 generally had prior criminal records rather than a current violent conviction. Given their records, these returnees did not have to commit a violent crime to bring them back to prison.

Average age at arrest varies by type of crime

Most serious charge	Average age at arrest in 1985
Gambling	37 years
Murder	30
Sex offenses	30
Fraud	30
Embezzlement	29
Aggravated assault	29
Forcible rape	28
Weapons	28
Forgery and counterfeiting	27
Drug abuse violations	26
Stolen property	25
Larceny/theft	25
Arson	24
Robbery	24
Burglary	22
Motor vehicle theft	22

Source: Age-specific arrest rates and race-specific arrest rates for selected offenses 1965-85, FBI Uniform Crime Reporting Program, December 1986.

The average age of arrestees for most crimes remained fairly constant from 1965 to 1985

Some exceptions are that the average age of persons arrested for—
- murder declined
- forcible rape increased
- fraud declined
- embezzlement declined
- larceny/theft increased
- motor vehicle theft increased

The greatest increase in average age was for persons arrested for arson.

Historically, studies have shown property crimes to be more typical of youths than of older offenders

In a historical assessment of offending patterns, Cline reviewed several studies. These studies indicated a change from property to violent crimes as adolescents moved into adulthood.

Adults commit more serious crimes than juveniles

In a study of delinquency over time in England, Langan and Farrington examined the relationship between age of offenders and the value of the property they stole. The study found that crimes committed by adults were much more serious when measured in terms of value of stolen property than those committed by juveniles. Findings showed that the average amount stolen increased with age.

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Repeat offenders are responsible for much of the Nation's crime

Who are career criminals?

The term "career criminal" has been used to describe offenders who—

- have an extensive record of arrests and convictions
- commit crimes over a long period of time
- commit crimes at a very high rate
- commit relatively serious crimes
- use crimes as their principal source of income
- specialize (or are especially expert) in a certain type of crime
- have some combination of these characteristics

Such criminals are often described as chronic, habitual, repeat, serious, high-rate, or professional offenders.

Some criminals exhibit all of the above characteristics, but most do not. Some high-rate offenders are arrested frequently and others rarely. In fact, some low-rate offenders are arrested more often than some high-rate ones. The frequency with which an offender commits crimes varies over time. Thus, an offender could be high-rate one month and low-rate the next. Similarly, the offender who commits a serious crime may or may not be committing serious or other crimes at a high rate. And some high-rate and/or serious offenders have no or almost no official prior record of involvement in crime.

A few criminals commit many crimes

Most offenders commit crimes at low rates, but a few do so at very high rates.

Studies in Philadelphia, Pennsylvania; Racine, Wisconsin; and Columbus, Ohio, show that 23 to 34% of the juveniles involved in crime are responsible for 61 to 68% of all the crimes committed by juveniles. In a national sample of U.S. youths age 11-17, the 7% who were the most active offenders committed about 125 crimes per year each, whereas the 55% who were the least active committed an average of fewer than 8 per year.

The same disproportionate pattern occurs with adults. The Chaikens' study of nearly 2,200 offenders coming into California, Michigan, and Texas jails and prisons found that 50% of the robbers committed an average of fewer than 5 robberies per year, but a robber in the most active 10% committed more than 85 per year. And, while 50% of the burglars averaged fewer than 6 burglaries per year, the most active 10% averaged more than 232 per year.

A Washington, D.C., study reported that 24% of all the adult arrests were attributable to just 7% of the adults arrested. Similarly, a 22-State study by BJS of young parolees revealed that about 10% of this group accounted for 40% of their later arrest offenses.

High-rate offenders seldom specialize in one type of crime

Instead, they tend to commit a variety of misdemeanors and felonies as well as both violent and property crimes. They also often engage in related crimes, such as property and drug offenses.

Few repeat offenders are full-time criminals

Most chronic offenders have irregular sources of income. And they usually commit crimes during the periods they are not employed. However, some prefer a "criminal career" to conventional employment.

Juvenile delinquency often foreshadows adult criminal activity

Most juvenile delinquents do not go on to become adult criminals, but many do continue to commit crimes.

- In Marion County, Oregon, 30% of the juvenile boys convicted of serious crime were later convicted of serious crimes as adults.

- In Chicago, 34% of the boys appearing in juvenile court later went to jail or prison as adults.

- The criminal records of 210 serious California juvenile offenders were examined to find out how many crimes they committed from age 18 to 26. Of this group, 173 (86%) were arrested for 1,507 crimes, including

5	homicides
12	rapes
20	other sex offenses
40	weapon offenses
88	robberies
131	assaults
166	drug offenses
211	burglaries

The more serious the juvenile career, the greater the chances of adult criminality

In New York City, 48% of the juveniles who had only 1 year of juvenile activity had one or more adult arrests and 15% were serious adult offenders. In contrast, 78% of those with lengthy juvenile careers were arrested as adults and 37% were serious adult offenders.

Long-term studies show that the more often a person is arrested, the greater the chances of being arrested again

For example, a study of Philadelphia males born in 1945 found that—

- 35% were arrested at least once
- 54% of those with one arrest had a second arrest
- 65% of those with two arrests had a third arrest
- 72% of those with three arrests had a fourth arrest.

A study of 539 former Illinois prison inmates showed that 53% of those with one incarceration were arrested within 29 months of their release date compared to a 76% recidivism rate among those with 3 or more incarcerations.

The more often an offender is arrested before going to prison, the more likely and the sooner that person will be arrested after his or her release

A BJS study of young parolees found that 69% were rearrested within 6 years of their release from prison. However, the rearrest rate was 93% among those with 6 or more prior arrests compared to 59% for those with one prior arrest. The median time between release from prison and the first subsequent arrest was 7 months for those with 6 or more prior arrests versus 17 months for those with one prior arrest. Similarly, the more often an offender was arrested before going to prison, the more likely and the sooner he or she was reconvicted and reincarcerated after being paroled.

Criminal history, age, and drug use are among the best correlates of future criminality

The combination of prior adult and juvenile record, age, and drug use provides a better than chance prediction of subsequent criminal activity. Hoffman found that when Federal inmates were placed into risk groups based on these factors, 94% of the persons predicted to be of least risk to society had a favorable 2-year parole outcome vs. 41% of those predicted to be among the worst risks.

The same variables also predict recidivism among State prisoners. For example, Klein and Caggiano found that 21% of a group of inmates in California who were forecast to have a relatively low likelihood of committing future crimes were back in jail or prison within 2 years of their release date vs. a 52% reincarceration rate in the predicted high-risk group.

After their release from custody, offenders continue to commit crimes and often serious crimes

Studies show that 10% to 20% of defendants on pretrial release are arrested while awaiting trial. A study of California offenders by Petersilia et al. found that more than 45% of the persons convicted of crimes such as robbery, burglary, assault, and theft were already on adult or juvenile probation or parole at the time of their conviction.

This study also found that 63% of those given felony probation were rearrested within 2 years of their release date. The recidivism rate was 72% among similar defendants who went to prison. In both groups more than 25% of the new filed charges were for violent crimes (homicide, rape, assault, and robbery).

Nationally, about half the inmates released from State prison will return to prison. And most of those who return will do so within 3 years of their release date. In 1979, 61% of the 153,465 males admitted to State prison had at least one prior incarceration.

The older the offender at the time of arrest, the longer he is likely to continue his criminal career

One study shows that an 18-year old who commits an Index crime usually stops committing crimes within 5 years of the arrest date but a 35-year old who has been committing crimes since age 18 usually goes on committing crimes for another 10 years. However, 18-year olds who commit murder or aggravated assault tend to have criminal careers of about 10 years duration.

Despite repeated convictions and incarcerations, many offenders continue to believe they can get away with committing crimes

The Chaikens asked inmates in three States, "Do you think you could do the same crime again without getting caught?" The answer "yes" was given by—

- 50% of the California inmates
- 34% of the Michigan inmates
- 23% of the Texas inmates.

Motivations for crime range from thrill-seeking to need for money

Juveniles who went on to have adult criminal careers have stated that their main motives for crime were thrill-seeking, status, attention-getting, or peer influence, according to a RAND Corporation study of habitual felons. As criminals approach adulthood, the reasons cited shift to financial needs, especially to money for drugs and alcohol.

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How do the offense characteristics of men and women differ?

Relatively few offenders are female

	Females in group
All arrests (adults and juveniles)	17%
Index crime arrests	21
Violent crime arrests	11
Property crime arrests	24
Larceny	31
Nonlarceny	8
Under correctional supervision	
Juveniles	20
Jail inmates	7
Prison inmates	5

Sources: FBI *Crime in the United States 1985*. BJS *Children in custody: 1982/83 Census of Juvenile Detention and Correctional Facilities*, September 1986. *Jail inmates, 1984*, BJS Bulletin, May 1986. *Prisoners in 1984*, BJS Bulletin, April 1985.

Offense patterns differ for males and females

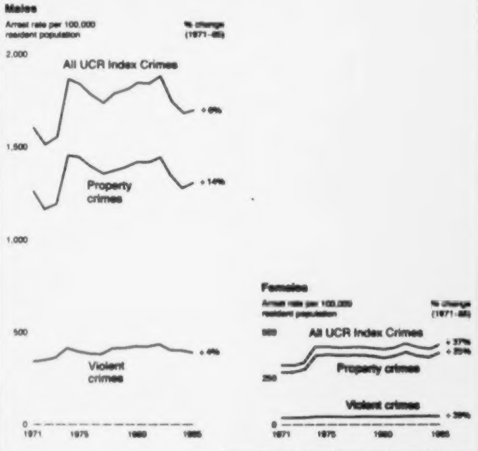
	Percent of all arrests	
UCR Index Crimes	Males	Females
Murder and non-negligent/manslaughter	88%	12%
Rape	99	1
Robbery	92	8
Aggravated assault	87	14
Burglary	93	7
Larceny-theft	69	31
Motor vehicle theft	91	9
Arson	87	13

Source: FBI *Crime in the United States 1985*.

- Men are more likely than women to be arrested for the more serious crimes, such as murder, rape, robbery, or burglary.

- Arrest, jail, and prison data all suggest that a higher proportion of women than of men who commit crimes are involved in property crimes, such as larceny, forgery, fraud, and embezzlement, and in drug offenses.

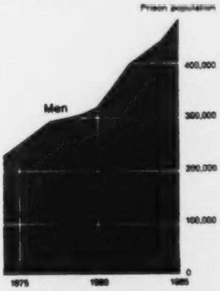
For UCR Index Crimes, the rate of arrest of females is much lower than that of males, but it has risen faster



Source: FBI Uniform Crime Reports, 1971-85, unpublished data.

While all prison populations have been growing dramatically, the women's share has risen from 4% to 5% in the past decade

Over the past 10 years, the number of women in prison rose by 107% (from 11,170 in 1976 to 23,091 in 1985), while the number of men rose by 80% (from 266,830 in 1976 to 480,510 in 1985).



Sources: BJS *Prisoners in State and Federal Institutions on December 31, 1982*. *Prisoners in 1984*, BJS Bulletin, April 1985. *Prisoners at midyear 1984*, BJS press release, August 27, 1984. BJS National Prisoner Statistics, unpublished data on prisoners in 1983 and 1985.

A relatively large proportion of offenders come from minority groups

The number of black criminals is disproportionately high

Blacks, who made up 12% of the U.S. population in 1980, accounted for—
- 27% of all arrests in 1985
- 34% of all UCR Index Crime arrests
- 47% of all arrests for violent crimes
- 40% of local jail inmates in 1984
- 46% of State prison inmates in 1984.

According to many researchers, the disproportionality of blacks in the prison population is mostly attributable to age, seriousness of crime, prior criminal record, and other legally relevant factors. This finding neither rules out nor confirms the possibility of some discrimination in the criminal justice system.

Victim reports confirm the pattern of arrests by race

The pattern of racial involvement in arrests shown in police records closely parallels that reported by victims of crime in the National Crime Survey.

	Percent of offenders who were black	
	Robbery	Burglary
NCS victim observation	63%	34%
UCR arrests	59	35

Note: Data exclude offenders under age 18 and of races other than black and white. NCS victims observed the offender in 92% of the robberies and 5% of the burglaries.

The lifetime chance of incarceration is six times higher for blacks than for whites

The likelihood that any adult male will have served time in a juvenile or adult jail or prison by age 64 is estimated to be 18% for blacks and 3% for whites. However, after the first confinement, the likelihood of further commitments is similar for white and black males. About a third of each group who have ever been confined will have been confined four times by age 64.

The proportion of black State prisoners in the South is more consistent with their share of the population than in other regions

	Blacks as a percent of prison population	Blacks as a percent of U.S. population	Ratio of prison proportion to U.S. proportion
United States	46%	12%	4 to 1
Northeast	51	10	5 to 1
Midwest	45	9	5 to 1
South	54	19	3 to 1
West	26	5	5 to 1

Sources: *Statistical abstract of the United States 1984*. BJS National Prisoner Statistics, 1984, unpublished data.

Blacks were more likely than whites to be violent offenders

Among UCR Index Crimes, the arrest rate of blacks was higher for violent than for property crimes.

	Whites	Blacks
All arrests	72%	27%
All Index Crimes	65%	34%
Violent crimes	52%	47%
Murder	50	48
Rape	52	47
Robbery	37	62
Aggravated assault	58	40
Property crimes	68%	30%
Burglary	70	29
Larceny-theft	67	31
Motor vehicle theft	66	32
Arson	76	23

Note: Percentages do not add to 100% because arrests of persons of other races are not shown.

In 1983 blacks accounted for 45% of all prison admissions and about 47% of all admissions for violent crimes. Of all blacks admitted to prison in 1983, 38% were admitted for violent crimes as compared to 31% of all whites. Eighteen percent of all blacks were admitted for robbery as compared to 11% of all whites.

The proportion of Hispanics in prisons and jails is greater than in the total U.S. population

Fifteen million Hispanics make up 6% of the U.S. population. This number is divided about equally between males and females.

Hispanics (both white and black)—
- accounted for 15% of all arrests for violent crimes and 11% of all arrests for property crimes in 1985
- made up 13% (27,423) of the male jail population and 11% (1,929) of the female jail population in 1984
- made up 10% (46,125) of the male prison population and 9% (1,781) of the female prison population
- were more likely than non-Hispanics to be in jail or prison for drug offenses in 1983 and 1984.

What are the social and economic characteristics of offenders?

The relationship of an offender's social and economic background to crime has been hotly debated

There is no agreement over the relationship between crime and various social and economic factors. Some researchers believe that crime results from deprived backgrounds, while others see criminal behavior as another symptom of maladjustment. Whatever the relationship might be, we can measure certain characteristics of offenders and compare them to the population as a whole to give a profile of the offending population. This profile does not indicate which came first, the social and economic characteristic or the criminal behavior. It also does not explain why some people with similar characteristics do commit crimes and others do not.

A high proportion of offenders grew up in homes with one parent

About 46% of jail and prison inmates grew up primarily with one parent or other relatives. In 1980, 20% of the children under age 18 in the United States were living with one parent. Moreover, about 15% of the jail inmates and 16% of the prison inmates grew up with neither parent, whereas 4% of all children under age 18 in the United States in 1980 were living with neither parent. Some studies suggest that the relationship between family background and delinquency is particularly strong for females.[2]

Many offenders have been victims of childhood abuse

A study of inmates at the California Institution for Men at San Quentin found that many inmates had been abused extensively as children. Although data are limited, some studies suggest that adolescents subjected to extreme abuse and violence at home may develop psychotic symptoms, neurological abnormalities, and violent behavior.

Prison and jail inmates were likely to have relatives who served time

About 40% of the prison inmates in 1979 and 34% of the jail inmates in 1983 had an immediate family member (father, mother, brother, sister, spouse, or child) who had been incarcerated in the past. Baunach found that 53% of the 180 inmates who were mothers had other family members with criminal records. These family members were primarily siblings (59%) and husbands, ex-husbands, or lovers (28%).

Most offenders were not married

Among jail and prison inmates—
- About half had never been married and another 24% were divorced or separated (vs. 54% unmarried and 4% divorced or separated among U.S. males age 20–29).
- 22% of the prison and 21% of the jail population were married (vs. 47% of the comparable U.S. population).

The proportion of divorced and separated whites was much higher in jails and prisons than in the U.S. population; the marital status of black inmates was closer to that of blacks in the U.S. population.

Most inmates have dependent children

Women offenders are more likely than men to have dependent children. In 1979, 74% of women prison inmates and 54% of the men had dependent children. In jails in 1983, 71% of the women and 54% of the men had dependent children. Of those inmates who had children, about 67% of those in jail and 71% of those in prison had 1 or 2 children.

The level of education reached by jail and prison inmates was far below the national average

- About 40% of all jail and 28% of all prison inmates had completed high school as compared to 85% of males age 20–29 in the U.S. population.
- About 45% of all prison and 41% of all jail inmates as compared with 11% of the U.S. population of males age 20–29 began but did not complete high school.
- As compared with the U.S. population of males age 20–29, there were few college graduates in jail or prison.

Educational level was associated with type of offense

	Percent of inmates who completed high school	
Offense	Jail	Prison
Drug offenses	34%	29%
Violent offenses	27	21
Property offenses	27	19
Public order offenses	31	18

Sources: BJS Survey of Inmates of State Correctional Facilities, 1979, unpublished data. BJS Survey of Inmates of Local Jails, 1983, unpublished data.

Many offenders were unemployed

The highest incarceration rate among U.S. males age 16-64 was among those who were unemployed prior to arrest:

	Number of inmates per 100,000 U.S. population	
	Jail	Prison
In labor force	330	396
Employed	220	356
Unemployed	1,792	933
Not in labor force	323	442
Total	329	405

About 45% of all males in jail in 1983 were unemployed at the time they entered jail. Among the 55% who were working, 22% were working only part-time. In the U.S. male population age 16-64, 84% are employed and of these 3% work part-time.

A high proportion of adult felons lacked steady employment

Adult felons were more likely than the general population never to have worked at all or to have held a wide variety of short-term jobs.[3] Of the prisoners in a RAND Corporation study, 20% had never worked and another 20% held a variety of short-term jobs. On average, felons in these groups committed more crimes, particularly more property crimes, than the 60% who had had a more stable employment history.

The proportion of blue-collar workers was higher in prison than in the general population

Occupation	Prison population	U.S. population age 16-64
White-collar	15%	51%
Blue-collar	68	33
Farm	2	3
Service	14	13

Sources: BJS Survey of Inmates of State Correctional Facilities, 1979, unpublished data. *The current population survey 1972-81: A data book*, volume I, Bureau of Labor Statistics Bulletin, September 1982.

Few inmates had been working in their customary occupation

Before their arrest, 30% of all jail inmates in 1983 who were working were employed outside what they considered to be their customary occupation. Earlier surveys of prison inmates had similar findings. In addition to an inability to find work in their chosen field, this suggests some degree of underemployment.

The average inmate was at the poverty level before entering jail

In 1983 about half the males in jail who had been out of jail or prison for at least a year had annual incomes under $5,600, a median income of about half that of men in the general population ($11,848) in 1981. Female jail inmates reported a median income of about $4,000 during the year before arrest, slightly more than half of that for women in the general population ($7,370). The median income for both male and female jail inmates in 1983 did not exceed the poverty level as defined by the U.S. Government.

Many inmates had income from nontraditional sources before entering jail

Among jail inmates—
- 22% depended on welfare, Social Security, or unemployment benefits
- 7% said that their main source of income was illegal
- 60% said that their main source of income had been a wage or a salary

A larger proportion of female than male inmates—
- depended on welfare, unemployment benefits, or Social Security (38% vs. 22%)
- depended on family or friends for their subsistence (31% vs. 23%)
- admitted that their main income was from illegal activities (11% vs. 7%)

Drug and alcohol use is common among offenders

The drug use-crime link is complex

There is evidence of a relationship between drug use, including alcohol use, and crime. How strong it is and how it operates is not clear. Obviously, some drug use is illegal in and of itself. But its impact on other crimes is uncertain. As with other characteristics, drug use may be another symptom of maladjustment. The general pattern of usage by offenders as compared to nonoffenders provides a profile of drug and alcohol use.

Some ways in which drug and alcohol use could contribute to crime include—
- stimulating aggressiveness or weakening inhibitions of offenders
- motivating offenders to commit crimes to get money to buy drugs.

Different drugs supposedly have different links to crime. For example, some hypothesize that alcohol's reduction of inhibitions leads to crime, particularly aggressive acts. On the other hand, heroin's addictive nature motivates some addicts to commit crimes to get money to buy drugs. Looking at when the drugs or alcohol were consumed in relationship to the time of the offense helps to clarify if and how drugs and alcohol are involved in crime.

Drug use is far greater among offenders than among nonoffenders

	Percent who had ever used drug		
	Jail inmates	Prison inmates	General population
Any drug	75%	78%	37%
Marijuana	72	75	33
Cocaine	38	37	25
Amphetamines	32	37	9
Barbiturates	27	35	6
Heroin	22	30	2

Sources: *Prisoners and drugs*, BJS Bulletin, March 1983. BJS Survey of Inmates of Local Jails, 1983, unpublished data. *Jail inmates, 1983*, BJS Bulletin, November 1985. *Highlights from the National Survey on Drug Abuse: 1982*, National Institute on Drug Abuse. BJS Survey of Inmates of State Correctional Facilities, 1979, unpublished data. *Highlights of the 1985 National Household Survey on Drug Abuse*, National Institute on Drug Abuse.

CORRECTION NOTICE FOR TABLE ON P. 50: THE PERCENT OF THE GENERAL POPULATION WHO HAD EVER USED COCAINE SHOULD READ 12% AND WHO HAD EVER USED HEROIN SHOULD READ 1%.

Prison inmates used alcohol more than their counterparts in the general population

- Almost half the inmates—but only a tenth of all persons age 18 and older in the general population—drank an average of an ounce or more daily.
- Males, both in prison and in the general population, were much more likely than females to drink an ounce or more.
- Men in prison were roughly three times as likely as men in general to consume an ounce or more daily. Women in prison were over five times more likely than women in general to consume that much.
- A sixth of the inmates and a third of the general population abstained from all alcohol.
- More than a third of all inmates drank alcoholic beverages daily during the year before the crime. Two-thirds of these inmates drank very heavily; that is, at any one drinking session they typically drank the equivalent of eight cans of beer, seven 4-ounce glasses of wine, or nearly nine ounces of 80-proof liquor.

Which comes first—drug use or crime?

There is some indication that involvement in crime may precede drug use. Greene found that most arrested addicts began their criminal behavior before they began using drugs regularly. Similarly, the 1979 Prison Inmate Survey showed that for more than half the inmates, involvement in crime preceded their drug use. Other research shows that most heroin-addicted criminals were involved in crime before they became addicted and that traditional income sources, rather than street crimes, are the major source of support for the drug habit.

What is the relationship between increased drug use and crime?

Studies in Baltimore, California, and Harlem show increased criminal involvement with more drug usage. Ball, Shaffer, and Nurco found that over a 9-year period, the crime rate of 354 black and white heroin addicts dropped with less narcotics use and rose 4 to 6 times with active narcotics use. Similarly, Anglin and Speckart compared criminal involvement of 753 white and Hispanic addicts before and after addiction. Results showed that 21-30% more persons were involved in crimes the year after addiction began, arrests increased substantially, and the number of days addicts were involved in crimes increased 3 to 5 times their number prior to the first addiction.

In a study of behaviors and economic impacts of 201 street heroin users in Harlem between 1980 and 1982, Johnson et al. revealed that daily heroin users reported the highest crime rates, 209 nondrug crimes per year compared with 162 among regular users, and 116 among irregular users. Daily heroin users committed about twice the number of robberies and burglaries as regular users and about 5 times as many as irregular users.

Drug users are more involved in money-producing crimes

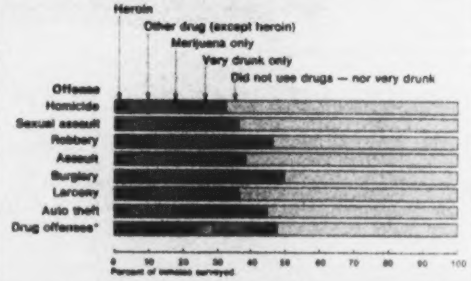
The RAND career criminal study found that, among felons, drug users committed more burglaries, con-type crimes, and drug sales than burglars, con-men, and drug dealers who did not use drugs. For other crimes there were no appreciable differences between drug users and nondrug users in either the number of prisoners involved or in the number of crimes they committed. Ball's study of Baltimore addicts showed that drug users committed an enormous number of crimes, mainly theft and drug dealing, and that, on average, the typical addict committed a crime every other day.

How does drug and alcohol use vary by crime?

Among prison inmates in 1979 about 35% of the property offenders, primarily burglars, and 38% of the robbers had been under the influence of drugs, mainly marijuana, at the time of the crime. By contrast, smaller proportions of murderers (21%) and rapists (22%) had been under the influence of drugs at the time of the crime for which they were incarcerated.

Similarly, among jail inmates in 1983 almost 1 in 3 convicted property offenders as compared with 1 in 4 violent offenders said they had been under the influence of drugs at the time of the current offense. Among property offenders the highest proportion using drugs at the time of the crime were those convicted of burglary (39%), auto theft (33%), or larceny (30%). Among violent offenders, robbers (31%) were the highest proportion who reported being under the influence of drugs at the time of the current crime.

2 out of 5 prison inmates reported they were under the influence of drugs or were very drunk around the time of the offense



*Includes trafficking and possession.

Source: BJS Survey of State Prison Inmates, 1979.

Nearly half the incarcerated offenders had been drinking just prior to the current crime.

- About half the convicted offenders incarcerated for a violent crime had used alcohol before the crime. Alcohol use was particularly pervasive among persons convicted of assault (about 60%).
- Among property offenders, more than 4 in 10 convicted inmates had used alcohol just before the current crime.
- Nearly 3 in 10 convicted drug offenders had used alcohol before the current crime.

How do inmates very in their drug use?

- Many inmates were under the influence of marijuana but usually in combination with other more serious drugs such as heroin.
- At the time of their offense, fewer jail inmates were under the influence of heroin (9% prison inmates, 5% jail inmates).
- 5% of the prison inmates were under the influence of cocaine at the time of their offense.
- Among prison inmates, women were more likely than men to have been under the influence of heroin (14% vs. 8%).
- White prison inmates were more likely than black inmates to have been drinking heavily (39% vs. 18%).

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Through sentencing, society attempts to express its goals for the correctional process

The sentencing of criminals often reflects conflicting social goals

These objectives are—

- **Retribution**—giving offenders their "just deserts" and expressing society's disapproval of criminal behavior
- **Incapacitation**—separating offenders from the community to reduce the opportunity for further crime while they are incarcerated
- **Deterrence**—demonstrating the certainty and severity of punishment to discourage future crime by the offender (specific deterrence) and by others (general deterrence)
- **Rehabilitation**—providing psychological or educational assistance or job training to offenders to make them less likely to engage in future criminality
- **Restitution**—having the offender repay the victim or the community in money or services.

Attitudes about sentencing reflect multiple goals and other factors

Research on judicial attitudes and practices in sentencing revealed that judges vary greatly in their commitment to various goals when imposing sentences. Public opinion also has shown much diversity about the goals of sentencing, and public attitudes have changed over the years. In fashioning criminal penalties, legislators have tended to reflect this lack of public consensus.

Sentencing laws are further complicated by concerns for—

- **Proportionality**—severity of punishment should be commensurate with the seriousness of the crime
- **Equity**—similar crimes and similar criminals should be treated alike
- **Social debt**—the severity of punishment should take into account the offender's prior criminal behavior.

Judges usually have a great deal of discretion in sentencing offenders

The different sentencing laws give various amounts of discretion to the judge in setting the length of a prison or jail term. In a more fundamental respect, however, the judge often has a high degree of discretion in deciding whether or not to incarcerate the offender at all. Alternatives to imprisonment include—

- probation
- fines
- forfeiture of the proceeds of criminal activity
- restitution to victims
- community service
- split sentences, consisting of a short period of incarceration followed by probation in the community.

Often, before a sentence is imposed a presentence investigation is conducted to provide the judge with information about the offender's characteristics and prior criminal record.

Disparity and uncertainty arose from a lack of consensus over sentencing goals

By the early 1970s researchers and critics of the justice system had begun to note that trying to achieve the mixed goals of the justice system without new limits on the discretionary options given to judges had—

- reduced the *certainty* of sanctions, presumably eroding the deterrent effect of corrections
- resulted in *disparity* in the severity of punishment, with differences in the sentences imposed for similar cases and offenders
- failed to validate the effectiveness of various rehabilitation programs in changing offender behavior or predicting future criminality.

Recent sentencing reforms reflect more severe attitudes and seek to reduce disparity and uncertainty

Reforms in recent years have used statutory and administrative changes to—

- clarify the aims of sentencing
- reduce disparity by limiting judicial and parole discretion
- provide a system of penalties that is more consistent and predictable
- provide sanctions consistent with the concept of "just deserts."

The changes have included—

- making prison mandatory for certain crimes and for recidivists
- specifying presumptive sentence lengths
- requiring sentence enhancements for offenders with prior felony convictions
- introducing sentencing guidelines
- limiting parole discretion through the use of parole guidelines
- total elimination of discretionary parole release (determinate sentencing).

States use a variety of strategies for sentencing

Sentencing is perhaps the most diversified part of the Nation's criminal justice process. Each State has a unique set of sentencing laws, and frequent and substantial changes have been made in recent years. This diversity complicates the classification of sentencing systems. For nearly any criterion that may be considered, there will be some States with hybrid systems that straddle the boundary between categories.

The basic difference in sentencing systems is the apportioning of discretion between the judge and parole authorities

Indeterminate sentencing—the judge specifies minimum and maximum sentence lengths. These set upper and lower bounds on the time to be served. The actual release date (and therefore the time actually served) is determined later by parole authorities within those limits.

Partially indeterminate sentencing—a variation of indeterminate sentencing in which the judge specifies only the maximum sentence length. An associated minimum automatically is implied, but is not within the judge's discretion. The implied minimum may be a fixed time (such as 1 year) for all sentences or a fixed proportion of the maximum. In some States the implied minimum is zero; thus the parole board is empowered to release the prisoner at any time.

Determinate sentencing—the judge specifies a fixed term of incarceration, which must be served in full (less any "goodtime" earned in prison). There is no discretionary parole release.

Since 1975 many States have adopted determinate sentencing, but most still use indeterminate sentencing

In 1976 Maine was the first State to adopt determinate sentencing. The sentencing system is entirely or predominantly determinate in these 10 States:

California
Connecticut
Florida
Illinois
Indiana
Maine
Minnesota
New Mexico
North Carolina
Washington

The other States and the District of Columbia use indeterminate sentencing in its various forms. One State, Colorado, after changing to determinate sentencing in 1979, went back to indeterminate sentencing in 1985. The Federal justice system has adopted determinate sentencing through a system of sentencing guidelines.

States employ other sentencing features in conjunction with their basic strategies

Mandatory sentencing—Law requires the judge to impose a sentence of incarceration, often of specified length, for certain crimes or certain categories of offenders. There is no option of probation or a suspended sentence.	Mandatory sentencing laws are in force in 46 States (all except Maine, Minnesota, Nebraska, and Rhode Island) and the District of Columbia. In 25 States imprisonment is mandatory for certain repeat felony offenders. In 30 States imprisonment is mandatory if a firearm was involved in the commission of a crime. In 45 States conviction for certain offenses or classes of offenses leads to mandatory imprisonment; most such offenses are serious, violent crimes, and drug trafficking is included in 18 of the States. Many States have recently made drunk driving an offense for which incarceration is mandated (usually for relatively short periods in a local jail rather than a State prison).
Presumptive sentencing—The discretion of a judge who imposes a prison sentence is constrained by a specific sentence length set by law for each offense or class of offense. That sentence must be imposed in all unexceptional cases. In response to mitigating or aggravating circumstances, the judge may shorten or lengthen the sentence within specified boundaries, usually with written justification being required.	Presumptive sentencing is used, at least to some degree, in about 12 States.
Sentencing guidelines—Explicit policies and procedures are specified for deciding on individual sentences. The decision is usually based on the nature of the offense and the offender's criminal record. For example, the prescribed sentence for a certain offense might be probation if the offender has no previous felony convictions, a short term of incarceration if the offender has one prior conviction, and progressively longer prison terms if the offender's criminal history is more extensive.	Sentencing guidelines came into use in the late 1970s. They are— • used in 13 States and the Federal criminal justice system • written into statute in the Federal system and in Florida, Louisiana, Maryland, Minnesota, New Jersey, Ohio, Pennsylvania, and Tennessee • used systemwide, but not mandated by law, in Utah • applied selectively in Massachusetts, Michigan, Rhode Island, and Wisconsin • being considered for adoption in other States and the District of Columbia.
Sentence enhancements—In nearly all States, the judge may lengthen the prison term for an offender with prior felony convictions. The lengths of such enhancements and the criteria for imposing them vary among the States.	In some States that group felonies according to their seriousness, the repeat offender may be given a sentence ordinarily imposed for a higher seriousness category. Some States prescribe lengthening the sentences of habitual offenders by specified amounts or imposing a mandatory minimum term that must be served before parole can be considered. In other States the guidelines provide for sentences that reflect the offender's criminal history as well as the seriousness of the offense. Many States prescribe conditions under which parole eligibility is limited or eliminated. For example, a person with three or more prior felony convictions, if convicted of a serious violent offense, might be sentenced to life imprisonment without parole.

Sources: Surveys conducted for the Bureau of Justice Statistics by the U.S. Bureau of the Census in 1985 and by the Pennsylvania Commission on Crime and Delinquency in 1986.

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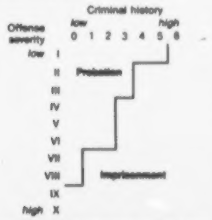
Sentencing guidelines usually are developed by a separate sentencing commission

Such a commission may be appointed by the legislative, executive, or judicial branch of State government. This is a departure from traditional practice in that sentences are prescribed through an administrative procedure rather than by explicit legislation.

In some States the guidelines are prescriptive in that they specify whether or not the judge must impose a prison sentence and the presumptive sentence length. In other States the guidelines are advisory in that they provide information to the judge but do not mandate sentencing decisions.

To determine whether a prison sentence should be imposed, the guidelines usually consider offense severity and the offender's prior criminal record. A matrix that relates these two factors may be used.

Sentencing matrix



Adapted from Preliminary report on the development and impact of the Minnesota sentencing guidelines, Minnesota Sentencing Guidelines Commission, July 1982.

Sentencing guidelines used in the Federal justice system were developed by the United States Sentencing Commission. The guidelines provide for determinate sentencing and the abolition of parole. Ranges of sentence length are specified for various offense classifications and offender characteristics. The judge must provide written justification for any sentence that deviates from the guideline range; sentences that are less severe can be appealed by the prosecution, and sentences that are more severe can be appealed by the defense.

Changes in sentencing have brought changes in correctional practices

Many sentencing reforms have led to changes in the way correctional systems operate.

The proliferation of determinate and mandatory sentences during the past decade, together with dissatisfaction about the uncertainties of indeterminate sentencing (especially the linking of release decisions to rehabilitative progress or predictions of future behavior), have led to modifications in parole decisionmaking. Many States now use parole guidelines, and many have modified their use of "goodtime" and other incentives for controlling inmate behavior and determining release dates.

New administrative requirements, such as collection of victim restitution funds, operation of community service programs, and levying fees for probation supervision, room and board, and other services, have been added to traditional correctional practices.

Changes in sentencing laws and practices may be affecting the size of the correctional clientele. Such changes include—
- using determinate and mandatory sentencing
- limiting or abolishing parole discretion
- lowering the age at which youthful offenders become subject to the adult criminal justice system
- enacting in a few jurisdictions laws providing for life imprisonment without the possibility of parole.

Forfeiture is a relatively new sanction

What is forfeiture?

Forfeiture is government seizure of property derived from or used in criminal activity. Its use as a sanction aims to strip racketeers and drug traffickers of their economic power because the traditional sanctions of imprisonment and fines have been found inadequate to deter or punish enormously profitable crimes. Seizure of assets aims not only to reduce the profitability of illegal activity but to curtail the financial ability of criminal organizations to continue illegal operations.

There are two types of forfeiture: civil and criminal

- **Civil forfeiture**—a proceeding against property used in criminal activity. Property subject to civil forfeiture often includes vehicles used to transport contraband, equipment used to manufacture illegal drugs, cash used in illegal transactions, and property purchased with the proceeds of the crime. No finding of criminal guilt is required in such proceedings. The government is required to post notice of the proceedings so that any party who has an interest in the property may contest the forfeiture.

- **Criminal forfeiture**—a part of the criminal action taken against a defendant accused of racketeering or drug trafficking. The forfeiture is a sanction imposed on conviction that requires the defendant to forfeit various property rights and interests related to the violation. In 1970 Congress revived this sanction that had been dormant in American law since the Revolution.

The use of forfeiture varies greatly among jurisdictions

The Federal Government originally provided for criminal forfeiture in the Racketeer Influenced and Corrupt Organization (RICO) statute and the Comprehensive Drug Prevention and Control Act, both enacted in 1970. Before that time civil forfeiture had been provided in Federal laws on some narcotics, customs, and revenue infractions. More recently, language on forfeiture has been included in the Comprehensive Crime Control Act of 1984, the Money Laundering Act of 1986, and the Anti-drug Abuse Act of 1986.

Most State forfeiture procedures appear in controlled substances or RICO laws. A few States provide for forfeiture of property connected with the commission of any felony. Most State forfeiture provisions allow for civil rather than criminal forfeiture. A recent survey responded to by 44 States and territories found that under the controlled substances laws most States provide only for civil forfeiture. Eight States (Arizona, Kentucky, Nevada, New Mexico, North Carolina, Utah, Vermont, and West Virginia), however, have criminal forfeiture provisions.[1] Of the 19 States with RICO statutes, all but 8 include the criminal forfeiture sanction.[2]

What is forfeitable?

Originally, most forfeiture provisions aimed to cover the seizure of contraband or modes of transporting or facilitating distribution of such materials. The types of property that may be forfeited have been expanded since the 1970s to include assets, cash, securities, negotiable instruments, real property including houses or other real estate, and proceeds traceable directly or indirectly to violations of certain laws. Common provisions permit seizure of conveyances such as airplanes, boats, or cars; raw materials, products, and equipment used in manufacturing, trafficking, or cultivation of illegal drugs; and drug paraphernalia.

How long does it take to determine if property can be forfeited?

In most cases some time is provided before the actual forfeiture to allow persons with an interest in seized property to make a claim. Seized property is normally kept for 6 months to 1 year before being declared forfeit and disposed of. Contraband or materials that are illegal *per se*, such as drugs, are disposed of relatively quickly. Cars, airplanes, boats, and other forms of transportation are usually kept for about 6 months before disposal. Real property is often kept for longer periods. Administrative forfeitures usually take less time than ones that require judicial determination.

Because of the depreciation in value of many assets over time and the cost of storing or caring for such assets, forfeiture may result in a cost rather than revenue to the prosecuting jurisdiction.

What happens to forfeited property?

The disposition of forfeited property is controlled by statute or in some States by their constitutions. In many cases, the seizing agency is permitted to place an asset in official use once it has been declared forfeit by a court. Such assets are usually cars, trucks, boats, or planes used during the crime or proceeds of the crime.

For assets that are sold, the proceeds are usually used first to pay any outstanding liens. The costs of storing, maintaining, and selling the property are reimbursed next. Some States require that, after administrative costs are reimbursed, the costs of law enforcement and prosecution must be paid. More than half the States provide that any outstanding balance go to the State or local treasury, or a part to both. In eight States law enforcement agencies can keep all property, cash, or sales proceeds. If the State constitution governs distribution, the receiving agency is usually the State or local school system. Some States have specified the recipients to be special programs for drug abuse prevention and rehabilitation.

In 1984 the Federal Government established the Department of Justice Assets Forfeiture Fund to collect proceeds from forfeitures and defray the costs of forfeitures under the Comprehensive Drug Abuse Prevention and Control Act and the Customs Forfeiture Fund for forfeitures under customs laws. These acts also require that the property and proceeds of forfeiture be shared equitably with State and local law enforcement commensurate with their participation in the investigations leading to forfeiture.

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Sanctions for alcohol-related driving offenses are becoming more severe

Alcohol-related driving offenses carry both criminal and administrative sanctions

Because States license drivers, sanctions against persons convicted of driving while intoxicated and driving under the influence of alcohol include revocation or suspension of driver's licenses. In some States the administrative sanction may be imposed for a short period prior to conviction if there is sufficient evidence to believe the defendant was operating a motor vehicle while under the influence of alcohol. In 1986 the minimum period for license suspension or revocation for a first offense ranged from 21 days in one State to 36 months in another.

Criminal sanctions may involve incarceration, fines, community service, restitution, or alcohol treatment and education programs. In some States, criminal driving offenses are classified as felonies; in other States, they are misdemeanors. The term of incarceration permitted by statute for a first offense ranges from a minimum of 1 day up to 2 years. First offense fines range from $100 to $5,000.

In almost all States both administrative and criminal sanctions may be imposed for a conviction of driving while intoxicated. The criminal court imposes criminal sanctions while the licensing agency imposes the administrative sanctions on notification of conviction by the court.

In most States possible sanctions for repeat alcohol-related driving offenders are progressively severe

In 1986 more than half the States had license suspension or revocation minimums of a few months for first offenders and 12 months for second offenders. In 43 States the fines that may be imposed also increased with the number of prior convictions. For example, Arizona law permits fines of up to $1,000 for first offenses but up to $150,000 for third offenses. In 23 States repeat offenders may be subject to habitual offender laws resulting in enhancement of the term to incarceration.

Many States have resorted to mandatory sanctions

Type of sanction and prior history	Number of States imposing mandatory sanctions 1982	1986
Imprisonment		
1st offense	12	16
2nd	22	42
3rd	19	40
Fines		
1st offense	9	15
2nd	10	13
3rd	9	12
License suspension or revocation		
1st offense	31	25
2nd	39	44
3rd	38	44

Source: *A digest of State alcohol-highway safety related legislation*, first edition and fifth edition, National Highway Traffic Safety Administration, U.S. Department of Transportation.

Many States have increased the severity of their mandatory sanctions against alcohol-related driving offenses

Between 1982 and 1986—
- 4 States increased their mandatory fines for at least one offense
- 8 States increased the length of mandatory imprisonment for at least one offense
- 11 States increased the term for license suspension or revocation

A few years after imposing severe mandatory sanctions, many States reduced the severity of their sanctions, particularly for first offenses.

In 42 States imprisonment is mandatory for driving while intoxicated

State	Is imprisonment mandatory?	After which offense does imprisonment become mandatory?	Length of imprisonment
Alabama	Yes	2nd offense	2 days
Alaska	Yes	1st	3
Arizona	Yes	1st	1
Arkansas	No		
California	Yes	2nd	2
Colorado	Yes	2nd	7
Connecticut	Yes	1st	2
Delaware	Yes	2nd	60
DC	No		
Florida	Yes	2nd	10
Georgia	Yes	2nd	2
Hawaii	Yes	1st	2
Idaho	Yes	2nd	10
Illinois	Yes	2nd	2
Indiana	Yes	2nd	5
Iowa	Yes	2nd	7
Kansas	Yes	1st	2
Kentucky	Yes	2nd	7
Louisiana	Yes	1st	2
Maine	Yes	1st	2
Maryland	Yes	2nd	2
Massachusetts	Yes	2nd	14
Michigan	No		
Minnesota	No		
Mississippi	No		
Missouri	Yes	2nd	2
Montana	Yes	1st	1
Nebraska	Yes	2nd	2
Nevada	Yes	1st	2
New Hampshire	Yes	2nd	7
New Jersey	Yes	2nd	2
New Mexico	Yes	2nd	2
New York	No		
North Carolina	Yes	2nd	7
North Dakota	Yes	2nd	4
Ohio	Yes	1st	3
Oklahoma	No		
Oregon	Yes	1st	2
Pennsylvania	Yes	2nd	30
Rhode Island	Yes	2nd	2
South Carolina	Yes	1st	2
South Dakota	No		
Tennessee	Yes	1st	2
Texas	Yes	2nd	3
Utah	Yes	1st	2
Vermont	Yes	2nd	2
Virginia	Yes	2nd	2
Washington	Yes	1st	1
West Virginia	Yes	1st	1
Wisconsin	No		
Wyoming	Yes	2nd	7

Source: *A digest of State alcohol-highway safety related legislation*, fifth edition, National Highway Traffic Safety Administration, U.S. Department of Transportation.

Juveniles receive dispositions rather than sentences

Juvenile court dispositions tend to be indeterminate

The dispositions of juveniles adjudicated to be delinquent extend until the juvenile legally becomes an adult (21 years of age in most States) or until the offending behavior has been corrected, whichever is sooner.

Of the 45 States and the District of Columbia that authorize indeterminate periods of confinement—
- 32 grant releasing authority to the State juvenile corrections agency
- 6 delegate it to juvenile paroling agencies
- 5 place such authority with the committing judges
- 3 have dual or overlapping jurisdiction.

Most juvenile cases are disposed of informally

In 1982 about 54% of all cases referred to juvenile courts by the police and other agencies were handled informally without the filing of a petition. About 20% of all cases involved some detention prior to disposition.

Of about 600,000 cases in which petitions were filed, 64% resulted in formal adjudication. Of these, 61% resulted in some form of probation, and 29% resulted in an out-of-home placement.

The juvenile justice system is also undergoing changes in the degree of discretion permitted in confinement decisions

Determinate dispositions are now used in six States, but they do not apply to all offenses or offenders. In most cases they apply only to specified felony cases or to the juveniles with prior adjudications for serious delinquencies.

California imposes determinate periods of confinement for delinquents committed to State agencies based on the standards and guidelines of its paroling agency. Four States have similar procedures, administered by the State agencies responsible for operating their juvenile corrections facilities.

As of 1981 eight States had serious-delinquent statutes requiring that juveniles who are either serious, violent, repeat, or habitual offenders be adjudicated and committed in a manner that differs from the adjudication of other delinquents. Such laws require minimum lengths of commitment, prescribe a fixed range of time for commitment, or mandate a minimum length of stay in a type of placement, such as a secure institution.

Dispositions for serious juvenile offenders tend to look like those for adults

Aggregate statistics on juvenile court dispositions do not provide an accurate picture of what happens to the more serious offenders because many of the cases coming before juvenile courts involve minor criminal or status offenses. These minor cases are more likely to be handled informally by the juvenile court.

An analysis of California cases involving older juveniles and young adults charged by the police with robbery or burglary revealed more similarities in their disposition patterns than the aggregate juvenile court statistics would suggest. For both types of offenses, juvenile petitions were filed and settled formally in court about as often as were complaints filed and convictions obtained in the cases against adults. The juveniles charged with the more serious offenses and those with the more extensive prior records were the most likely to have their cases reach adjudication. At the upper limits of offense and prior record severity, juveniles were committed to secure institutions about as frequently as were young adults with comparable records.

The outcomes of juvenile and adult proceedings are similar, but some options are not available in juvenile court

For example, juvenile courts cannot order the death penalty, life terms, or terms that could exceed the maximum jurisdiction of the court itself. In Arizona the State Supreme Court held that, despite statutory jurisdiction of the juvenile courts to age 21, delinquents could not be held in State juvenile corrections facilities beyond age 18.[3]

Yet, juvenile courts may go further than criminal courts in regulating the lifestyles of juvenile offenders placed in the community under probation supervision. For example, the court may order them to—
- live in certain locations
- attend school
- participate in programs intended to improve their behavior.

The National Center for Juvenile Justice estimates that almost 70% of the juveniles whose cases are not waived or dismissed are put on probation; about 10% are committed to an institution.

Most juveniles committed to juvenile facilities are delinquents

	Percent of juveniles
Total	100%
Delinquents	74
Nondelinquents	
Status offenders	12
Nonoffenders (dependency, neglect, abuse, etc.)	14

Source: BJS Children in Custody, 1985 unpublished data.

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Current sentencing alternatives reflect multiple objectives

What types of sentences usually are given to offenders?

Death penalty—In most States for the most serious crimes such as murder, the courts may sentence an offender to death by lethal injection, electrocution, exposure to lethal gas, hanging, or other method specified by State law.

- As of 1985, 37 States had laws providing for the death penalty.
- Virtually all death penalty sentences are for murder.
- As of yearend 1985, 50 persons had been executed since 1976, and 1,591 inmates in 32 States were under a sentence of death.

Incarceration—The confinement of a convicted criminal in a Federal or State prison or a local jail to serve a court-imposed sentence. Confinement is usually in a jail, administered locally, or a prison, operated by the State or Federal Government. In many States offenders sentenced to 1 year or less are held in a jail; those sentenced to longer terms are committed to a State prison.

- More than 4,200 correctional facilities are maintained by Federal, State, and local governments. They include 47 Federal facilities, 922 State-operated adult confinement and community-based correctional facilities, and 3,300 local jails, which usually are county-operated.
- On any given day in 1985 about 503,000 persons were confined in State and Federal prisons. About 254,000 were confined in local jails on June 30, 1985.

Probation—The sentencing of an offender to community supervision by a probation agency, often as a result of suspending a sentence to confinement. Such supervision normally entails specific rules of conduct while in the community. If the rules are violated a sentence to confinement may be imposed. Probation is the most widely used correctional disposition in the United States.

- State or local governments operate more than 2,000 probation agencies.
- At yearend 1985, nearly 1.9 million adults were on probation, or about 1 of every 95 adults in the Nation.

Split sentences, shock probation, and intermittent confinement—A penalty that explicitly requires the convicted person to serve a brief period of confinement in a local, State, or Federal facility (the "shock") followed by a period of probation. This penalty attempts to combine the use of community supervision with a short incarceration experience. Some sentences are periodic rather than continuous; for example, an offender may be required to spend a certain number of weekends in jail.

- In 1984 nearly a third of those receiving probation sentences in Idaho, New Jersey, Tennessee, Utah, and Vermont also were sentenced to brief periods of confinement.

Restitution and victim compensation—The offender is required to provide financial repayment or, in some jurisdictions, services in lieu of monetary restitution, for the losses incurred by the victim.

- Nearly all States have statutory provisions for the collection and disbursement of restitution funds. A restitution law was enacted at the Federal level in 1982.

Community service—The offender is required to perform a specified amount of public service work, such as collecting trash in parks or other public facilities.

- Many States authorize community service work orders. Community service often is imposed as a specific condition of probation.

Fines—An economic penalty that requires the offender to pay a specified sum of money within limits set by law. Fines often are imposed in addition to probation or as alternatives to incarceration.

- The Victims of Crime Act of 1984 authorizes the distribution of fines and forfeited criminal profits to support State victim-assistance programs, with priority given to programs that aid victims of sexual assault, spousal abuse, and child abuse. These programs, in turn, provide assistance and compensation to crime victims.
- Many laws that govern the imposition of fines are being revised. The revisions often provide for more flexible means of ensuring equity in the imposition of fines, flexible fine schedules, "day fines" geared to the offender's daily wage, installment payment of fines, and the imposition of confinement only when there is an intentional refusal to pay.
- A 1984 study estimated that more than three-fourths of criminal courts use fines extensively and that fines levied each year exceed one billion dollars.

In most cases, a felony conviction results in a sentence that includes incarceration

Incarceration is most likely for serious crimes of violence

Sentences imposed in nine jurisdictions in 1981[a]

	Percent of convictions resulting in incarceration in prison or jail	
	Any	More than 1 year
All felonies[b]	71%	37%
Homicide and manslaughter	88	70
Sexual assault	79	52
Robbery	83	58
Assault	64	24
Burglary	76	39
Larceny and auto theft	62	24
Stolen property	66	26
Fraud	60	23
Drugs	62	21
Weapons	60	26
Other[c]	63	21

[a] Indianapolis, Indiana; Los Angeles, California; Louisville, Kentucky; Borough of Manhattan, New York; New Orleans, Louisiana; State of Rhode Island; St. Louis, Missouri; Salt Lake City, Utah; San Diego, California.
[b] Indicted cases that resulted in conviction in felony court; a few of the convictions were for misdemeanors.
[c] Includes kidnaping, morals offenses, arson, unknown, and miscellaneous other felonies.

Source: Barbara Boland with Ronald Sones, INSLAW, Inc., *The prosecution of felony arrests, 1981*, BJS, 1986.

Confinement may be in State prisons or local jails

In most jurisdictions local jails are used to incarcerate persons with short sentences (generally less than 1 year), while longer sentences are served in State prisons. However, some jurisdictions use jail instead of prison more often as the sanction against convicted felons serving longer terms. For example, in both Baltimore City, Maryland, and Philadelphia, Pennsylvania, in 1983 two-thirds of convicted felons were sentenced to incarceration. In Baltimore, virtually all such persons went to State prisons, while Philadelphia sent half to State prisons and half to county institutions.

Many felons are sentenced to probation

A 1985 study of felony sentencing in 18 local jurisdictions revealed that more than a fourth of felony sentences were for probation alone. Almost another fifth of convicted felons were sentenced to a time in jail followed by probation (split sentence).

Sentences are more severe for offenders convicted of multiple charges than for those convicted of single charges

According to the 18-jurisdiction study—

- More than a fourth of the persons convicted of felonies were convicted of more than one charge.
- Persons convicted of multiple felony charges were more likely to go to prison and received longer sentences. Of those convicted of a single charge, 40% were sentenced to prison vs. 56% of those convicted of two charges and 69% of those convicted of four or more charges.
- About 11% of those convicted of multiple charges and sentenced to prison were given consecutive sentences; the individual sentences must be served in sequence. The rest were given concurrent sentences, allowing several sentences to be served at the same time.

Prison sentences are longer for multiple-charge convictions

	Average sentence length for offenders convicted of—			
Conviction offense	One charge	Two charges	Three charges	Four or more charges
Violent offenses				
Homicide	11.2 yrs	18.1 yrs	23.0 yrs	34.5 yrs
Rape	8.8	14.7	18.8	23.2
Robbery	6.4	10.5	11.4	17.6
Aggravated assault	5.9	7.3	8.6	9.3
Property offenses				
Burglary	3.8	5.8	7.3	6.1
Larceny	2.8	4.4	4.4	4.0
Drug trafficking	3.4	5.3	6.0	7.5

Note: Sentences were classified according to the most serious conviction offense. Offenses are listed in order of seriousness. In addition to the most serious conviction charge, multiple conviction charges may include lesser offenses including misdemeanors.

Source: *Felony sentencing in 18 local jurisdictions*, BJS Special Report, June 1985.

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The death penalty is reserved for the most serious offenses and offenders

The death penalty was reaffirmed by the Supreme Court in 1976

In the 1972 decision *Furman v. Georgia* the Supreme Court struck down on Eighth Amendment grounds (forbidding cruel and unusual punishment) State and Federal capital punishment laws that permitted wide discretion in the application of the death penalty. In response, many States revised their statutes to conform to the guidelines in *Furman*.

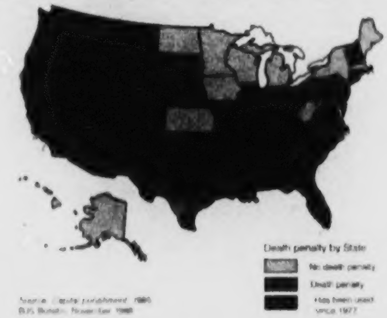
The High Court clarified these guidelines in a series of five decisions announced on July 2, 1976. In *Woodson v. North Carolina* and *Roberts v. Louisiana*, the Court struck down State statutes that required mandatory imposition of the death penalty for specified crimes. As a direct consequence, mandatory death penalty provisions in 21 States were invalidated either through later court action or repeal by State legislatures. This resulted in the modification to life imprisonment of death sentences imposed on hundreds of offenders in these States.

In three other major cases, however, the Supreme Court upheld State death penalty laws that afforded sentencing authorities discretion to impose death sentences for specified crimes (*Gregg v. Georgia*, *Jurek v. Texas*, and *Proffit v. Florida*). The Court validated statutes that permitted the imposition of the death penalty after consideration of aggravating and mitigating circumstances.

A total of 3,909 people have been executed since 1930, including 50 since 1977

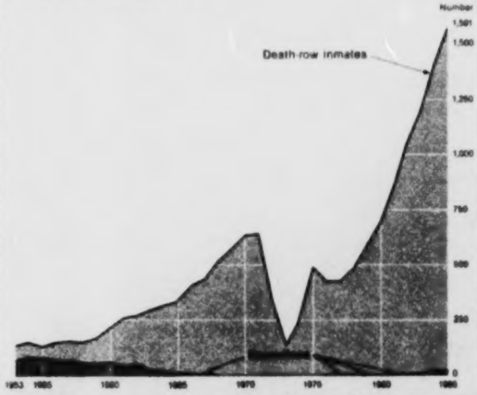
In 1977 the first execution in a decade was carried out in Utah. Two more executions followed in 1979 (Florida and Nevada), 1 in 1981 (Indiana), 2 in 1982 (Virginia and Texas), 5 in 1983 (2 in Florida and 1 each in Alabama, Mississippi, and Louisiana), 21 in 1984 (8 in Florida, 5 in Louisiana, 3 in Texas, 2 each in Georgia and North Carolina, and 1 in Virginia), and 18 during 1985 (6 in Texas, 3 each in Florida and Georgia, 2 in Virginia, and 1 each in Indiana, Louisiana, South Carolina, and Nevada).

At the end of 1985, 37 States had death penalty laws in effect



Source: *Capital punishment, 1985*, BJS Bulletin, November 1986

The number of persons on death row reached an alltime high in 1985



Source: *Capital punishment, 1985*, BJS Bulletin, November 1986

What types of murder are most often cited in State capital punishment laws?

Type of murder for which death penalty is authorized	Number of States
Murder during another crime	
Sexual offense (such as rape)	35
Kidnaping	34
Robbery	33
Burglary	32
Arson	29
Murder of a certain type of victim	
Police or other law enforcement officer	34
Corrections employee	26
Firefighter	22
Murder by a person with a criminal history or criminal justice status	
Defendant was in custody	27
Defendant was previously convicted of murder	20
Murder carried out in a particular way	
Defendant created a grave risk of death to others	26
Murder was especially heinous, atrocious, cruel, vile, etc.	23
Murder carried out for a particular purpose	
For pecuniary gain (contract murder, murder for hire)	35
To effect an escape	26
To avoid or prevent an arrest	20
Other	
Multiple murders	22
Hiring another to kill	21

Source: BJS analyses of State capital punishment laws, 1986.

Who is on death row?

Of the 1,591 inmates on death row in 1985—

- All had been convicted of murder, 2 out of 3 had at least one prior felony conviction, 1 out of 11 had a prior murder conviction, and 2 out of 5 had a legal status (on bail, probation, or parole) at the time of the capital murder.
- 1,574 were male and 17 were female.
- 903 were white, 672 were black, 11 were American Indian, 5 were Asian, and 99 were of Hispanic origin.
- The median elapsed time since death sentence was imposed was 36 months.

What methods of execution are used by the various States?

Lethal injection	Electrocution	Lethal gas	Hanging	Firing squad
Arkansas[a]	Alabama	Arizona	Delaware	Idaho[a]
Idaho[a]	Arkansas[a]	California	Montana[a]	Utah[a]
Illinois	Connecticut	Colorado	New Hampshire	
Mississippi[a,b]	Florida	Maryland	Washington[a]	
Montana[a]	Georgia	Mississippi[a,b]		
Nevada	Indiana	Missouri		
New Jersey	Kentucky	North Carolina[a]		
New Mexico	Louisiana	Wyoming[a]		
North Carolina[a]	Nebraska			
Oklahoma[c]	Ohio			
Oregon	Pennsylvania			
South Dakota	South Carolina			
Texas	Tennessee			
Utah[a]	Vermont			
Washington[a]	Virginia			
Wyoming[a]				

[a] Authorizes two methods of execution.

[b] Mississippi authorizes lethal injection for persons convicted after 7/1/84; executions of persons convicted before that date are to be carried out with lethal gas.

[c] Should lethal injection be found to be unconstitutional, Oklahoma authorizes use of electrocution or firing squad.

Source: Capital punishment, 1985, BJS Bulletin, November 1986.

What is minimum age authorized for capital punishment?

Minimum age authorized for capital punishment

10 years	13 years	14 years	15 years	16 years	17 years	18 years
Indiana	Georgia	Missouri	Arkansas	Connecticut	New Hampshire	California
Vermont	Mississippi	North Carolina	Louisiana	Montana	Texas	Colorado
			Virginia	Nevada		Illinois
						Nebraska
						New Jersey
						New Mexico
						Ohio
						Oregon
						Washington

No minimum age specified

Federal
Alabama
Arizona
Delaware
Florida
Idaho
Kentucky
Maryland
Oklahoma
Pennsylvania
South Carolina
South Dakota
Tennessee
Utah
Wyoming

Source: Capital punishment, 1985, BJS Bulletin, November 1986.

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For most inmates, prison sentences are much longer than the actual time they will serve

Sentences to prison vary widely between minimum and maximum terms and are longer for violent crimes

Admission offense	Percent of admissions	Average sentence of those admitted to prison	
		Minimum*	Maximum
All crimes	100%	40 mos	72 mos
Violent offenses	39%	62	100
Murder	4	177	281
Rape	3	82	117
Robbery	16	55	91
Assault	7	45	72
Property offenses	46%	27	58
Burglary	26	29	61
Auto theft	2	20	41
Forgery/fraud	5	26	53
Larceny	10	23	55
Drug offenses	8%	27	53
Public order offenses	5%	22	45
Other crimes	2%	27	27

*Defined as the estimated minimum time to be served prior to eligibility for release.

Source: *Prison admissions and releases, 1983*, BJS Special Report, March 1986.

Most prisoners are released before serving their maximum sentence

Release from prison generally occurs as the result of a decision of a paroling authority, mandatory release, or expiration of sentence. In 1984 half of all releases from prison were by a parole board decision.

- **Parole** is the release of a prisoner by the decision of a paroling authority. The offender is placed under the supervision of a parole officer who monitors the offender's compliance with rules of conduct imposed by the paroling authority. Violations of these rules may result in reimprisonment for the balance of the unexpired sentence.

- **Mandatory release** is based on earned "goodtime" (days earned for good behavior) or other statutory sentence-reduction measures and, though supervision is required after release, does not usually depend on the discretionary decision of a parole board. Supervision rules of conduct, if violated, may result in a return to prison for the time remaining on the sentence.

- **Expiration of sentence** occurs when the maximum term imposed by the court is served and the offender must be released without further conditions or supervision.

The release-from-prison process varies among jurisdictions

How long a prisoner will serve for a given offense usually depends on a long chain of decisionmaking processes that begin with the—
- types of sentencing standards set by State law
- degree of discretion allowed to a sentencing judge
- laws that govern goodtime earnings and eligibility for parole.

Goodtime is offered in nearly all jurisdictions as an incentive for good behavior while confined

In most jurisdictions inmates may earn credits against their sentences in two ways—automatic or earned goodtime. Automatic goodtime refers to credits defined by law or regulation based on the length of the sentence imposed, the length of time served, or the seriousness of the offense. For example, Colorado and Louisiana may credit up to 15 days per month while Minnesota and Oregon may credit 1 day for every 2 served. In the Federal system, automatic goodtime varies with the duration of the sentence.

Sentence length	Days credited per month
0–6 months	0 days
6 months to 1 year & 1 day	5
1 year & 1 day to 3 years	6
3 to 5 years	7
5 to 10 years	8
10 years or more	10

Earned goodtime, by contrast, is often given for participation in programs, such as education or vocational training, prison industry, or institutional work, and for exceptional conduct such as fighting forest fires and blood donations. Twenty States also have various kinds of early-release programs that may be invoked when institutions become crowded.

In 1983, more than half the persons released from State prisons served 19 months or less

Conviction offense	Percent of releases	Time served by releasees	
		Average	Median
All offenses	100%	28 mos	19 mos
Violent offenses	34%	38	30
Murder	2	90	79
Manslaughter	3	35	32
Rape	2	54	47
Other sexual assault	2	34	29
Robbery	14	36	30
Assault	8	29	24
Kidnaping	1	41	33
Other violent offenses	1	19	14
Property offenses	47%	19	15
Burglary	24	21	17
Arson	1	25	21
Auto theft	2	17	15
Forgery/fraud	6	19	15
Larceny	12	16	12
Stolen property	2	18	13
Other property	2	16	12
Drug offenses	9%	19	15
Public order offenses	9%	13	10
Other crimes	1%	18	16

Note: Time served includes jail credits.

Source: *Prison admissions and releases, 1983*, BJS Special Report, March 1986.

The percentage of persons released from prison by parole-board decision has been declining

In 1977 nearly 72% of all prison releases were by a parole-board decision. By 1984 parole decisions accounted for 46% of all releases. This change illustrates the impact of the movement away from discretionary decisionmaking toward more fixed penalty systems both at the sentencing and release points in the justice system. Mandatory release has increased in significance, giving new importance to the role of goodtime provisions in determining the amount of time to be served.

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Notes

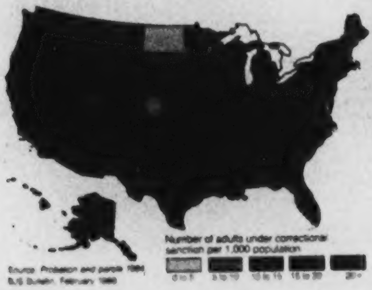
[1] *State laws and procedures affecting drug trafficking control: A national overview* (Washington: National Governors Association and the National Criminal Justice Association, July 1985), p. 66.

[2] *A comprehensive perspective on civil and criminal RICO legislation and litigation*, American Bar Association, Criminal Justice Section, April 1985, Appendix C.

[3] *In the matter of appeal in Maricopa County*, Case No. J-86509, Supreme Court, 604 PAC 2nd 641, December 14, 1979

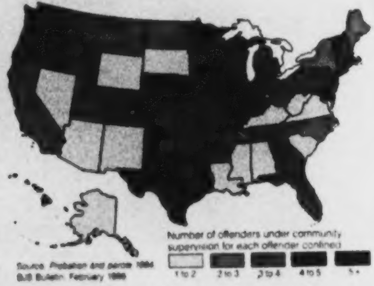
How many people are under some form of correctional supervision?

More than 1 1/2% of the adult U.S. population is under some form of correctional sanction


Number of adults under correctional sanction per 1,000 population
0 to 5
5 to 10
10 to 15
15 to 20
20+

Source: Probation and parole 1984, BJS Bulletin, February 1986

Three out of four adults under correctional care or custody are not incarcerated


Number of offenders under community supervision for each offender confined
1 to 2
2 to 3
3 to 4
4 to 5
5+

Source: Probation and parole 1984, BJS Bulletin, February 1986

More than 2.8 million adults are under some form of correctional care, custody, or supervision

Regions and States	Number of adults			
	On probation	In jail	In prison	On parole
United States, total	1,870,132	218,995	503,315	277,438
Federal	56,217	*	40,223	16,860
State	1,814,915	218,995	463,092	260,578
Northeast				
Connecticut	36,805	*	6,149	597
Maine	4,451	542	1,226	66
Massachusetts	24,637	3,304	5,390	4,496
New Hampshire	3,096	480	683	453
New Jersey	48,495	5,956	11,335	13,385
New York	100,816	15,877	34,712	25,279
Pennsylvania	65,286	10,167	14,227	12,200
Rhode Island	7,536	*	1,307	402
Vermont	5,298	*	677	236
Midwest				
Illinois	74,196	8,819	18,634	11,421
Indiana	39,121	3,488	9,904	2,797
Iowa	12,083	828	2,832	1,971
Kansas	15,473	1,308	4,732	2,282
Michigan	75,162	7,627	17,799	6,639
Minnesota	32,986	1,941	2,343	1,364
Missouri	26,780	3,761	9,915	4,534
Nebraska	10,720	817	1,814	364
North Dakota	1,589	238	422	166
Ohio	61,466	7,087	20,864	6,509
South Dakota	2,249	310	1,047	415
Wisconsin	24,298	3,003	5,442	3,850

Regions and States	Number of adults			
	On probation	In jail	In prison	On parole
South				
Alabama	16,520	4,452	11,015	2,425
Arkansas	9,268	1,540	4,611	3,830
Delaware	7,103	*	2,553	864
District of Columbia	11,777	*	6,404	2,340
Florida	130,767	14,313	28,600	4,214
Georgia	94,461	10,213	16,014	8,538
Kentucky	14,887	3,652	5,801	3,471
Louisiana	26,638	8,501	13,890	3,718
Maryland	67,138	4,572	13,006	7,308
Mississippi	6,638	2,482	6,392	3,392
North Carolina	56,207	3,474	17,344	3,184
Oklahoma	20,310	2,164	8,330	1,625
South Carolina	17,984	2,674	10,510	3,261
Tennessee	24,640	5,975	7,127	7,499
Texas	289,909	15,176	37,532	47,471
Virginia	17,238	5,616	12,073	5,641
West Virginia	3,806	1,015	1,725	638
West				
Alaska	2,606	34	2,329	156
Arizona	18,176	2,906	8,531	1,717
California	210,449	41,656	50,111	33,983
Colorado	17,612	2,739	3,369	2,003
Hawaii	7,895	*	2,111	716
Idaho	3,414	586	1,294	483
Montana	2,712	394	1,129	694
Nevada	5,386	926	3,771	1,313
New Mexico	4,185	1,324	1,324	1,115
Oregon	22,377	2,304	4,454	2,010
Utah	6,330	906	1,633	1,174
Washington	44,246	3,586	6,909	6,039
Wyoming	1,678	300	758	329

Note: Jail data are for June 30, 1985. All other are for December 31, 1985.
*Jail populations in States with combined jail/prison systems are included in prison population counts.

Source: Probation and parole 1985, BJS Bulletin, January 1987

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An estimated 95% of State prison inmates are either convicted violent offenders or have a history of prior sentences to probation, jail, or prison

Major factors in the decision to impose a prison sentence are the gravity of the current conviction offense and the seriousness and extent of the prior criminal history of the offender.

In 1979—
- For an estimated 58% of State prison inmates, conviction for committing a violent crime led to their current incarceration.
- About a third of these violent offenders had previous convictions for a violent offense and 3 of 4 had at least one prior sentence to probation, jail, or prison.
- Nearly 9 of 10 of the prisoners convicted of a nonviolent offense had at least one prior sentence to probation, jail, or prison.

Overall, about 5% of State prison inmates had a current conviction for a nonviolent crime and had no previous sentences to probation, jail, or prison. Nearly half of these first-time, nonviolent offenders were in State prison for conviction offenses of burglary or drug trafficking and about a third had two or more current conviction offenses.

How does the imprisonment rate in the United States compare to that of other countries?

Comparisons between the United States and other countries should be made with caution because of differences in criminal justice systems, crime classifications, and data collection.

For example, no event in the Federal Republic of Germany corresponds specifically to arrest. Their data include persons suspected of crimes (less serious than arrest) and persons formally charged with crimes (more serious than arrest).

	Estimated percent of arrested adults who are convicted and incarcerated for —		
	Robbery	Burglary	Theft*
United States	49%	35%	18%
Canada	52	23	14
England and Wales	48	30	14
Federal Republic of Germany	23-58**		4-9

— Not available.
*Includes burglary and auto theft.
**Because no event like arrest exists here, the range represents the percent of those suspected of crime and the percent of those formally charged with crimes.

Source: Imprisonment in four countries, BJS Special Report, February 1987.

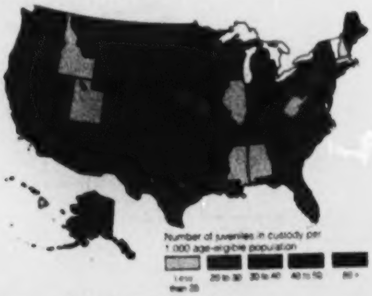
More than 83,000 persons were in juvenile facilities in 1985

	Number of juveniles in public and private facilities
United States, total	83,402
Northeast	
Connecticut	997
Maine	467
Massachusetts	1,064
New Hampshire	235
New Jersey	1,814
New York	5,398
Pennsylvania	3,263
Rhode Island	316
Vermont	137
Midwest	
Illinois	2,066
Indiana	2,686
Iowa	1,090
Kansas	1,363
Michigan	3,369
Minnesota	1,912
Missouri	1,415
Nebraska	834
North Dakota	207
Ohio	4,880
South Dakota	439
Wisconsin	1,775
South	
Alabama	974
Arkansas	922
Delaware	190
District of Columbia	417
Florida	3,336
Georgia	1,300
Kentucky	1,047
Louisiana	1,530
Maryland	2,154
North Carolina	1,344
Oklahoma	835
South Carolina	762
Tennessee	1,530
Texas	4,122
Virginia	1,724
West Virginia	265
West	
Alaska	361
Arizona	1,799
California	15,812
Colorado	1,096
Hawaii	210
Idaho	261
Montana	247
Nevada	542
New Mexico	604
Oregon	1,179
Utah	291
Washington	1,748

Note: Data on juveniles are for February 1, 1985. An additional 2,112 adults were held in juvenile facilities. Data from Mississippi and Wyoming are not shown to preserve confidentiality.

Source: Children in custody: Public juvenile facilities 1985, BJS Bulletin, October 1986, and Children in Custody 1985, unpublished data.

About .3% of the juvenile population was in custody in 1985


Number of juveniles in custody per 1,000 age-eligible population
Less than 20
20 to 30
30 to 40
40 to 50
50 +

Sources: Children in custody: Public juvenile facilities 1985, BJS Bulletin, October 1986, and Children in Custody 1985, unpublished data.

CORRECTION NOTICE FOR
MAP ON P. 103:
LEGEND SHOULD READ "PER 10,000
AGE-ELIGIBLE POPULATION."

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What are the trends in correctional populations?

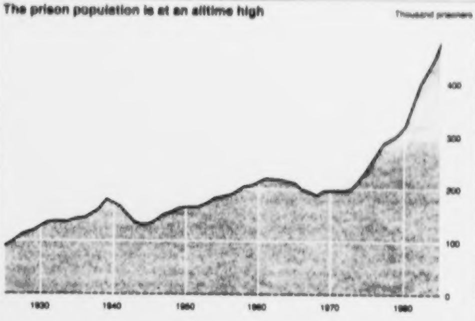
All correctional populations are growing

Correctional population	1983		1984		1985		Percent change in correctional populations 1983-85
	Number	Percent of adult population	Number	Percent of adult population	Number	Percent of adult population	
Total	2,488,450	1.45%	2,705,525	1.56%	2,904,979	1.65%	16.7%
Probation	1,582,947	.92	1,740,948	1.00	1,870,132	1.06	18.1
Jail	221,815	.13	233,018	.13	254,094	.14	14.6
Prison	437,248	.26	464,567	.27	503,315	.29	15.1
Parole	246,440	.14	266,992	.15	277,438	.16	12.6

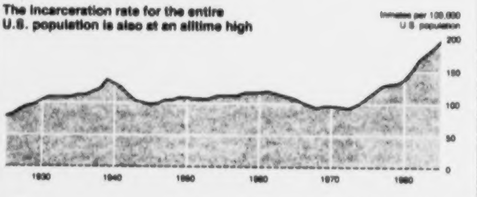
Note: The following are estimates of the resident population age 18 and older on July 1: 1983—171,332,000; 1984—173,489,000; 1985—175,727,000. Population counts for probation, parole, and prison are for December 31, and jail counts are for June 30.

Source: *Probation and parole 1985*, BJS Bulletin, January 1987

The prison population is at an alltime high



The incarceration rate for the entire U.S. population is also at an alltime high



Source: *State and Federal prisoners, 1925–1985*, BJS Bulletin, October 1986

Probation populations are growing at a faster rate than other correctional populations

Over the past several years, probation populations have increased by more than 18% vs. about 15% in jail and prison populations and nearly 13% in the number of parolees. Nearly two-thirds of the total correctional population was under probation supervision in the community at yearend 1985.

	Probationers were one of every
1983	109 adults
1984	100
1985	94

Since 1970 the number of local jails has declined by 17% and the number of inmates present on a single day has risen by nearly 40%

The reduction in the number of local jails reflects increasing consolidation of small jails into larger institutions, often serving more than one jurisdiction. In 1972 there were 113 jails designed to house 250 inmates or more; by 1983 there were 201 facilities of this size.

The number of jail inmates grew from 160,863 in 1970 to 223,551 in 1983. The 1972 Jail Census found the number of jail inmates declined to 141,588. By the 1978 Jail Census, the jail population had begun to rise again to 158,394. This increase continued with the 1983 jail population reaching a peak since data collection began in 1970.

Perhaps the single most important feature of local jails is the rapidity of population movements. In 1978 about 6.1 million were admitted to local jails vs. about 8.1 million in 1983.

Why are prison populations growing?

State departments of corrections attribute the increase in prison population to changes in sentencing laws and practices that reflect greater interest in deterrence, incapacitation, and just deserts considerations; stricter law enforcement; growth in the number of persons in the high-risk age group (males ages 20–29); and, in some cases, economic conditions.

The number of admissions to prison annually has increased relative to both the number of serious crimes reported to the police and the number of adult arrests

Between 1980 and 1984, for example, prison population increased by 41%, commitments per 100 serious crimes increased by 50%, commitments per 100 adult arrests for serious crimes increased 25% and the number of commitments increased 19%. Over the same period, the number of adults in the resident population increased by 9%.

Since 1977 prison populations have grown by more than two-thirds

By yearend 1985 the Nation's prison population exceeded 500,000 and was growing by 750 new prisoners a week. During the preceding 5 years, Western States led the Nation, increasing their sentenced prison population by nearly 90%. In Southern States, many under Federal or State court orders to limit growth and control crowding, inmate growth was 37%. The prison populations growing most rapidly were in Alaska (160%), Hawaii (129%), Nevada (113%), New Hampshire (110%), California (108%), and New Jersey (104%).

Total admissions to prison reached an alltime high in 1984

Growth in admissions is due partly to the increase in conditional release violators returned to prison (mostly probation and parole violators). Among admissions to prison, conditional release violators made up 5% in 1930, 19% in 1970, and 23% in 1984.

Court commitment rates have not been shrinking. The highest rate of court commitments (101 per 100,000 adults in the population) was reached in 1983. In 1930 it was 70; in 1970 it was 50.

Between 1979 and 1984 the number of inmates in State-operated, community-based halfway houses grew half as fast as the number of inmates in State prisons

Many States operate halfway houses in local communities. They do so to ease the transition for State-sentenced prisoners from their confinement to their impending release. Between 1979 and 1984 the number of residents of such halfway houses grew by 2,300, even though, during the same period, the nationwide percentage of State-sentenced prisoners residing in such halfway houses declined from 4% to 3%.

In both 1979 and 1984 Southern States accounted for about half of the State-operated, community-based halfway houses and for more than 60% of the residents of such houses.

Between 1979 and 1984, while State prison populations grew by nearly 45%, the number of residents of halfway houses grew by about 21%.

The use of parole is declining

The methods by which persons are discharged from prison have changed dramatically in recent years. The percentage of release decisions made by parole boards declined from 72% in 1977 to 43% in 1985.

What are the trends in juvenile correctional populations?

The total number of residents in juvenile facilities has grown. Between 1974 and 1985 the 1-day count of juveniles in custody grew by 9%, and the average daily population grew by 6%.

Most of the recent increase in population (1979–85) is accounted for by growth in the number of delinquents from about 49,000 in 1979 to about 58,000 in 1985. The number of status offenders has remained at 9,000 since 1979, but the number of nonoffenders (dependent, neglected, or voluntary admissions) housed in these facilities has grown by about 21%.

From 1974 to 1984 admissions and discharges to juvenile facilities both declined by 10%. Most of this decline resulted from declines in public facility admissions (18%) and discharges (19%). In privately operated facilities during this time, admissions increased by 88% and discharges increased by 112%.

In what type of facilities are prisoners held?

Confined offenders are housed in three types of facilities

- **Jails** are operated by local governments to hold persons awaiting trial or generally those sentenced to confinement for less than 1 year. In seven jurisdictions (Vermont, Rhode Island, Connecticut, Delaware, Alaska, Hawaii, and the District of Columbia), jails are operated by the same authority that administers the prison system. On June 30, 1983, 223,551 persons were held in 3,338 local jails. The Federal Bureau of Prisons operates Metropolitan Correctional Centers and Detention Centers that essentially function as Federal jails.
- **Prisons** are operated by States and the Federal Government to hold persons sentenced to confinement for generally more than 1 year; 4% of the Nation's prison inmates are serving sentences of less than 1 year or are unsentenced; nearly 63% of such inmates are housed in Federal institutions or the 7 jurisdictions with consolidated prison and jail systems. On June 30, 1984, 381,955 persons were confined in 694 State prisons.
- **Community-based facilities** are operated publicly or privately (under contract) to hold persons for less than 24 hours a day to permit the offender limited opportunities for work, school, or other community contacts. Such facilities are used for a variety of purposes including specialized interventions or assistance (for example, drug or alcohol treatment), graduated release from prison—usually prior to parole—or as a sanction in lieu of prison or jail confinement. On June 30, 1984, 13,354 offenders were residing in 209 State-operated facilities and about 7,000 more beds were in use in privately operated facilities.

Most jails are quite small and hold small numbers of persons in custody

Two out of three local jails were built to hold fewer than 50 inmates, but only 1 of 8 jail inmates reside in such facilities. More than half of all jail inmates are in facilities built to house 250 or more inmates, but such places account for about 6% of all local jails.

Large jails are the most densely populated

The number of jail inmates often varies between weekends and weekdays and increases sharply after arrest sweeps by police. As a result, jail populations fluctuate more than those of prisons, so that jails typically need more reserve capacity than prisons. Nevertheless, unused bed space shrank between 1978 and 1983 as occupancy rose from 64% to 81%. Moreover, among large jails, where most inmates were housed, occupancy rose from 77% in 1978 to 96% in 1983. Among regions in 1983, occupancy in large jails peaked at 102% of capacity in the West, 97% in the Northeast, 96% in the Midwest, and 90% in the South.

Jails house diverse populations

Nationally, jails hold a mix of persons at various stages of criminal justice processing.

Among jail inmates are persons—
- awaiting arraignment or trial (the unconvicted)
- convicted but awaiting sentence
- sentenced to prison but awaiting transport
- held in jail because of prison crowding (there were more than 11,500 such persons in 1984)
- convicted of probation or parole violations.

It is estimated that in 1984 49% of all jail inmates were convicted; the other 51% had not been convicted.

Annual jail admissions are nearly 36 times the average daily population

Perhaps the most important feature of local jails is the high volume of inmate turnover. In the year ending June 30, 1983, the 3,338 local jails reported a total of more than 16 million admissions and releases. In the Nation, nearly 44,000 jail transactions occur each day.

What are the staffing patterns of local jails

	Full-time employees in local jails	
Occupational categories	Number	Inmate/staff ratio
Total	58,763	3.8
Administrative	5,220	42.8
Custodial	41,876	5.3
Service	3,958	56.5
Other	7,709	29.0

Note: Data are as of June 30, 1983.

Source: The 1983 jail census, BJS Bulletin, November 1984.

More than half the Nation's inmates live in large prisons

On June 30, 1984, the 694 State-operated prisons held 381,955 inmates. Southern States operated nearly 48% of these institutions, which held about 44% of all State inmates. Large prisons, housing more than 1,000 inmates, made up 15% of all prisons but held more than half the Nation's prisoners.

Prisons are often classified by the level of security

- **Maximum- or close-custody prisons** are typically surrounded by a double fence or wall (usually 18 to 25 feet high) with armed guards in observation towers. Such facilities usually have large interior cell blocks for inmate housing areas. In 1984, according to self-reports of superintendents, about 1 in 4 State prisons was classified as maximum security, and about 44% of the Nation's inmates were held in these facilities.

- **Medium-custody prisons** are typically enclosed by double fences topped with barbed wire. Housing architecture is varied, consisting of outside cell blocks in units of 150 cells or less, dormitories, and cubicles. In 1984, according to self-reports of superintendents, 40% of all prisons were medium security and 44% of the Nation's inmates were held in such facilities.

- **Minimum-custody prisons** typically do not have armed posts and may use fences or electronic surveillance devices to secure the perimeter of the facility. More than a third of the Nation's prisons are graded by superintendents as minimum-security facilities, but they house only about 1 of 8 inmates. This is indicative of their generally small size.

What are the characteristics of State prisons?

Characteristics	Percent of prisons	Percent of inmates
Total	100%	100%
Region		
Northeast	15	17
Midwest	20	20
South	48	44
West	17	19
Size		
Less than 500 inmates	65	22
500-1,000	20	27
More than 1,000	15	51
Custody level		
Maximum security	25	44
Medium security	39	44
Minimum security	35	12
Sex of inmates housed		
All male	88	91
All female	7	3
Co-ed	5	5
Age of facility		
Over 100 years	5	12
50-99 years	16	23
25-49 years	22	18
15-24 years	14	13
5-14 years	23	20
5 years or less	20	15
Not known	—	—

Note: Totals may not add to 100% because of rounding.
— Less than 5%.

Sources: *Population density in State prisons*, BJS Special Report, December 1986; BJS *1984 Census of State Adult Correctional Facilities*, NCJ 105585, August 1987.

One in three prisons is at least 50 years old and 43% of all inmates live in such prisons

About one in five prisons is 5 years old or less. This is indicative of the rapid construction of new prisons in recent years. More than half of all prisoners are confined in prisons at least 25 years old; about 1 in 8 lives in a prison that is more than 100 years old.

Prisons employ about 1 staff member for every 3 inmates

In 1984 more than 135,000 persons were employed full-time in the Nation's State prisons. Custodial staff made up about two-thirds of all prison employees, with about four inmates per custodial officer. Prisons in Maine, New Mexico, Rhode Island, and Vermont reported the fewest inmates per staff member; prisons in Alabama, Arkansas, Nevada, and Ohio had the highest ratios of inmates to staff.

Since 1979 the number of full-time prison staff grew by nearly 45%. Custodial staff accounted for about 82% of the increase among all categories of employees. During the same period, prison population increased at about the same proportion as all staff.

About 3% of State inmates live in State-operated, community-based facilities

On June 30, 1984, 13,354 offenders residing in State correctional facilities were living in facilities that provided regular access to the community for selected offenders. These facilities, often referred to as halfway houses or prerelease centers, generally are used during the last 3-6 months of a State sentence to provide for gradual reentry to the community from prison. Female offenders make up about 4% of those in prisons and about 8% of those in community-based facilities.

The 209 community-based facilities are generally small—about half hold fewer than 50 inmates. About 1 in 7 of such facilities is designed to hold both male and female inmates.

Prison crowding is a major issue in nearly every State

Recent growth in State and Federal prison populations has been substantial

Between 1980 and 1985, sentenced prison populations grew by 52%, adding more than 150,000 inmates over the period. The sentenced population of 34 States and the Federal prison system grew by 50% or more. Among the States with the fastest growth in prisoner populations were Alaska (160%), Hawaii (129%), Nevada (113%), New Hampshire (110%), and California (108%).

Growth of this magnitude has been difficult for many jurisdictions to accommodate. Planning, funding, siting, and building a facility and acquiring trained staff may require 5–7 years before the opening of a new facility. Between 1979 and 1984, 5.4 million square feet of housing space was built, an increase of 29% over the 1979 level. However, most States and the Federal Government continue to operate in excess of their capacities.

Various measures are used to assess crowding

Some of the most commonly used measures of crowding are—

- whether inmates are in single or multiple occupancy units
- the amount of space available per inmate (usually expressed in square feet)
- how long prisoners are confined in the housing unit and how long they spend, for example, in recreational or work areas
- the type of housing in which inmates are confined (general housing or special segregated housing that may be used for disciplinary confinement or protective custody).

The American Correctional Association's accreditation standards specify that inmates held in single occupancy cells should have at least 60 square feet in the cell and should not spend more than 10 hours per day in the cell. For inmates housed in multiple occupancy cells, the standards recommend 50 square feet per inmate and confinement for no more than 10 hours per day in a housing unit.

Other factors are often cited as being involved in crowding, such as the amount of privacy and security provided inmates and the ability of the facility to provide adequate food, basic health care, recreational opportunities, and other types of programs.

In what kind of space are prison inmates confined?

	Percent of inmates in general housing units with —		
	Less than 60 square feet	60 or more square feet	Total
Single occupancy	12%	18%	30%
Hours confined per day			
Less than 10 hours	8	12	20
10 or more hours	5	5	10
Multiple occupancy	49	21	70
Hours confined per day			
Less than 10 hours	32	15	47
10 or more hours	17	6	23
Total	62%	38%	100%

Note: Special housing is excluded because, by definition, inmates in such housing generally are kept in their housing units and are not eligible to participate in regular prison programs.

Source: *Population density in State prisons*, BJS Special Report, December 1986.

States vary widely in the amount of housing space available to State prison inmates

	Average square feet per inmate				
	Less than 50	50–59	60–69	70–79	80–89
Northeast	Maine 49.9 N. Hampshire 42.1	Massachusetts 59.5 Pennsylvania 51.6 Connecticut 50.2	New York 66.2 New Jersey 64.7 Rhode Island 64.3 Vermont 60.1		
Midwest	S. Dakota 49.7 Missouri 48.6 Kansas 40.8	Illinois 57.2 Ohio 53.7 Indiana 52.3	N. Dakota 69.1 Minnesota 68.5 Michigan 66.2 Nebraska 61.7 Iowa 61.2	Wisconsin 70.4	
South	Maryland 46.7 S. Carolina 46.3 Texas 39.9	Alabama 58.6 Tennessee 55.9 Florida 55.4 N. Carolina 55.3 Mississippi 50.0	Virginia 66.9 Oklahoma 66.7	Arkansas 75.7 W. Virginia 73.1 Louisiana 72.5 Kentucky 71.5	Delaware 87.8 DC 84.4 Georgia 81.0
West	California 48.0 Washington 47.8 Oregon 46.5 Idaho 46.3 Hawaii 37.8	Montana 56.3 Nevada 54.4	Utah 64.8	Arizona 75.8 N. Mexico 75.5 Alaska 71.0	Wyoming 89.2 Colorado 80.2
Regionally		Northeast 55.4 South 55.5 Midwest 56.9 West 54.1			
		U.S. 57.3			

Note: Table is based on 367,953 inmates in general and special housing on June 30, 1984. It excludes infirmary space and inmates housed in infirmaries.

Source: Data derived from *Population density in State prisons*, BJS Special Report, December 1986.

Prison space varies by housing type

Units with the least amount of space per inmate tend to be —
- occupied by two persons
- protective custody or disciplinary segregation units
- maximum security units
- in facilities built in 1885 or earlier
- in facilities that house 1,000 or more inmates
- in facilities that house all males or both males and females

	Percent of all inmates	Average square feet per inmate	Percent of inmates in multiple occupancy	Average number of hours per day confined to unit
All prisons	100%	57.3 sq. ft	67%	11.3 hours
Number of persons per unit				
One inmate	34	68.2	0	12.3
2	24	34.4	100	11.0
3-5	3	45.8	100	11.3
6-49	16	63.9	100	10.7
50 or more	24	61.8	100	10.5
Housing unit use				
General housing	88	57.3	70	10.4
Special purpose	9	57.1	30	19.9
Other	4	128.2	65	15.0
Security designation				
Maximum security	33	52.8	49	13.1
Medium	45	57.1	72	10.8
Minimum	22	64.3	82	9.5
Age of facility				
Over 100 years	12	49.2	43	13.5
50-99	23	58.9	59	11.5
25-49	18	53.0	78	10.7
15-24	13	53.8	75	11.2
5-14	20	60.6	73	10.8
5 or less	15	64.9	68	10.6
Size of facility				
1-499 inmates	22	66.6	74	10.3
500-1,000	27	58.1	68	11.1
More than 1,000	51	52.7	63	11.8
Facility houses				
All males	91	57.0	66	11.4
All females	3	64.7	66	9.9
Both	5	57.0	59	10.4

Note: Data refer to inmates in general and special housing except under "Housing unit use" where "Other" is shown for comparison. Percentage may not total to 100 because of rounding.

Source: Population density in State prisons, BJS Special Report, December 1986.

Prisons with the highest densities hold about a quarter of prison inmates

A prison is said to have the highest population density when more than 40% of its inmates in regular housing reside in less than 60 square feet for more than 10 hours per day. More than half of all prisons have no inmates in these conditions.

Population densities were highest in prisons in—
- the Southern and Western States
- larger institutions (more than 1,000 inmates)
- maximum security institutions
- male-only prisons
- the oldest prisons (more than 100 years old)

Many States hold prisoners in local jails because of prison crowding

At yearend 1985, 19 States reported more than 10,000 State-sentenced inmates in local jails because of prison crowding. Nationally, locally retained State prisoners accounted for about 2% of the total prison population. States with the largest percentage of prison inmates held in local jails were Louisiana (21%), Mississippi (15%), Kentucky (14%), and New Jersey (12%). Together, these States account for 62% of the prisoners backed up in local jails.

A number of States may release inmates earlier than usual to control prison populations

Generally, the three types of early release programs are—
- **Emergency release**—This permits jurisdictions to release inmates who are approaching the end of their sentences. Alaska, for example, allows early release of nonviolent offenders within 4 months of release. Wisconsin inmates may be discharged early if they are within 135 days of release.
- **Sentence rollback**—Nine States use sentence reductions to achieve population control. Generally, this approach requires a formal declaration that the prison system is above its authorized capacity and sentences of selected inmates (such as first offenders or nonviolent offenders) may be reduced by up to 90 days. Some States permit reductions to be applied to the same offender more than once during a term of imprisonment.
- **Early parole**—Eight States allow parole release dates to be advanced for certain categories of offenders when the prison system is crowded.

Such programs may also entail a period of more stringent supervision by a parole officer or participation in special community-based programs.

During 1985, 19 States reported nearly 19,000 early releases under one or more of these approaches.

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Juvenile offenders are housed in many kinds of facilities

More than 83,000 juveniles were in custody during 1984

They were held in 3,036 public and private juvenile custody facilities that were in operation in 1984. Such facilities include detention centers, training schools, reception or diagnostic centers, shelters, ranches, forestry camps or farms, halfway houses, and group homes.

The range of facilities and programs; the housing of delinquents, status offenders, voluntary admissions, and dependent and neglected children in the same facilities; and the participation of both the public and private sectors clearly distinguishes juvenile corrections from adult corrections.

Most juveniles in custody were being detained or were committed for a criminal offense

Of the 83,402 juveniles held in public and private facilities—
- 11% were being held for a violent offense of murder, forcible rape, robbery, or aggravated assault
- 23% were being held for the property crimes of burglary, arson, larceny-theft, or motor vehicle theft
- 4% were being held for alcohol or drug offenses.

Of the 25,451 nondelinquents held in juvenile facilities—
- 35% were status offenders
- 36% were being held for other reasons such as dependency, neglect, and abuse
- 28% were admitted voluntarily.

Public and private facilities generally hold different types of juveniles

Almost all (93%) of the juveniles in public facilities either are—
- detained pending adjudication
- have been committed after a finding of delinquency for a criminal offense (about a third of the juveniles in private facilities are in this classification).

Juvenile facilities are classified by the term of stay and type of environment

Term of stay

- **Short-term**—facilities that hold juveniles awaiting adjudication or other disposition.

- **Long-term**—facilities that hold juveniles already adjudicated and committed to custody.

In 1985, 46% of public facilities and 9% of private facilities were short-term; 54% of public facilities and 91% of private facilities were long-term.

Type of environment

- **Institutional**—environments impose greater restraints on residents' movements and limit access to the community. Most detention or diagnostic centers, training schools, and ranches are classified as having institutional environments.

- **Open**—environments allow greater movement of residents within the facilities and more access to the community. Facilities with open environments mainly include shelters, halfway houses, group homes, and ranches, forestry camps, or farms.

Most public facilities (65%) have institutional environments, but most private facilities (86%) have open environments.

Most juvenile facilities are private, but about three-fifths of the juveniles are held in public facilities

Private facilities usually have open environments and are used for long-term custody. About 30% of all juveniles in custody are held in such facilities. Public facilities generally have institutional environments and are used for both short- and long-term custody. About 30% of all juveniles held are in long-term institutional public facilities; another 18% are in short-term institutional public facilities.

Most juvenile facilities are small; 80% are designed to house 40 residents or less

	Number of facilities		
Design capacity*	Public and private combined	Public	Private
Total	3,036	1,040	1,996
Less than			
10 residents	1,053	141	912
10–20	913	326	638
21–40	464	226	207
41–99	387	174	193
100–199	146	114	32
200 and over	73	59	14

*The number of residents a facility is constructed to hold without double bunking in single rooms or using areas not designed as sleeping quarters to house residents.

Source: Children in custody: Public juvenile facilities, 1985, BJS Bulletin, October 1986, and Children in Custody, 1985, unpublished data.

What is the staffing ratio of juvenile facilities?

	Number of residents per 10 staff members	
	Public	Private
All staff	9	8
Part-time	38	30
Full-time	11	12
Staff function		
Treatment/ education	49	40
Youth supervision	22	24
Other	43	41

Source: BJS *Children in custody: 1982/83 Census of Juvenile Detention and Correctional Facilities*, September 1986.

How many offenders return to criminal activity after they are released?

Assessing postcorrectional performance depends on long-term followup of prison releases

Some indicator of a return to criminal activity is typically used to evaluate postcorrectional performance. Rearrest, reindictment, reconviction, and reimprisonment measured over some period of time after release from prison are generally used to gauge the extent of success and failure (recidivism) associated with correctional programs.

The unit of time selected and the level of criminal justice system penetration (that is, more persons are likely to be rearrested than reimprisoned) will substantially affect judgments about the proportion of releasees failing or succeeding after a correctional experience.

Moreover, conditionally released populations (parolees) are subjected to supervision requirements that, if violated, may result in a return to prison for noncriminal conduct (such as curfew violation or failure to report to a parole officer).

Most prison inmates have prior convictions

Inmate criminal history	Percent of 1979 admissions to prison
Total	100%
Prior convictions	84%
1	19
2	17
3	11
4	9
5	6
6-10	15
11 or more	7
No prior convictions	16%

Source: *Examining recidivism*, BJS Special Report, February 1985.

Measures of recidivism vary; more offenders are rearrested than reconvicted and more are reconvicted than reincarcerated

	Percent of young parolees who within 6 years of release from prison were —		
	Rearrested	Reconvicted	Reincarcerated
All parolees	69%	53%	49%
Sex			
Men	70%	54%	50%
Women	52	40	36
Race/Ethnicity			
White	64%	49%	45%
Black	76	60	56
Hispanic	71	50	44
Other	75	65	63
Education			
Less than 12 years	71%	55%	51%
High school graduate	61	46	43
Some college	48	44	31
Paroling offense			
Violent offenses	64%	43%	39%
Murder	70	25	22
Robbery	64	45	40
Assault	72	51	47
Property offenses	73%	60%	56%
Burglary	73	60	56
Forgery/fraud	74	59	56
Larceny	71	61	55
Drug offenses	49%	30%	25%

Source: *Recidivism of young parolees*, BJS Special Report, May 1987.

Over a 20-year period, an estimated half of all releasees will return to prison, most in the first 3 years after release

A study based on prisoner self-reports of how long it took them to return to prison found that 49% of all males released from prison could be expected to return within 20 years. 60% of those returning reentered prison within the first 3 years after release. The highest risk of returning to prison was in the first year after release.

The number of prior arrests is strongly related to the probability of rearrest and reincarceration after release from prison

Number of arrests prior to prison release	Percent of young parolees who within 6 years of release were —	
	Rearrested	Reincarcerated
1 arrest	59%	42%
2	64	45
3	70	49
4	77	57
5	82	52
6 or more	93	72
Total	69%	49%

Source: *Recidivism of young parolees*, BJS Special Report, May 1987.

Younger releasees have higher rates of returning to prisons

Age at time of prison release	Cumulative rates of return to prison by years after release from prison						
	1 year	2 years	3 years	4 years	5 years	6 years	7 years
18-24 years old	21%	34%	41%	45%	48%	49%	50%
25-34	12	21	28	33	37	41	43
35-44	7	14	18	22	26	30	34
45+	2	4	6	8	10	11	12
All ages	14	23	29	34	37	40	42
Median age of those returning	23.5 yrs	25.5 yrs	26.3 yrs	27.2 yrs	27.8 yrs	28.6 yrs	32.4 yrs

Source: *Examining recidivism*, BJS Special Report, February 1985.

Chapter V

The cost of justice

Sue A. Lindgren

This chapter reports the costs of the criminal justice system and the relationship of justice spending to other government outlays. The data from this chapter answer such questions as—

How much does crime cost?

What portion of total government spending goes for criminal justice?

What level of government spends the most for criminal justice? For police protection? For prosecution, legal services, and public defense? For the court system? For corrections?

How much does each State spend per capita for its justice system?

What is the impact of private sector involvement in the criminal justice system?

What percentage of total government spending has been used for police over the past 80 years and for corrections over the past 30 years?

Has government spending for justice functions increased over the past two decades even when inflation is considered?

What do justice dollars buy? How much does it cost to bring an offender to justice? To keep a person in prison or on probation? How much does it cost to build a prison? A jail?

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How much does crime cost?

The total cost of crime to society has been estimated, but the actual figure is unknown

There will never be a simple, single answer to the seemingly simple question, "What is the total cost of crime to society?" Some estimates have been made. For example, Wharton Econometric Forecasting Associates, Inc., recently estimated the total gross receipts from criminal activity to be between $26.9 billion and $136.9 billion in 1986 dollars.[1] Where the actual total lies within this $110 billion range is unknown because many of the component costs cannot be measured directly.

Although fairly accurate figures exist for some of the component costs of crime, many of the components cannot easily be measured.

- Some costs are difficult to measure, such as the higher costs for consumers from organized crime involvement in legitimate industries.
- Other costs of crime are difficult to quantify, like the pain and suffering of crime victims, their families and friends.
- Many crimes are undetected, such as successful fraud, embezzlement, and arson-for-profit.
- Some crimes go unreported because victims are afraid to report (blackmail), are embarrassed (con games), or are involved in the illegal activity (gambling).

What would be included in the total cost of crime to society?

Some of the direct costs of crime include—

- medical costs because of injuries suffered in victimization
- lost productivity because of death and medical or mental disabilities resulting from crime
- time lost from work by victims of crime
- damage to property
- lower property values because of crime in the neighborhood
- the cost of operating the criminal justice system
- the costs of private security services and devices, such as locks and burglar alarms.

In addition to direct costs, "involuntary transfers" occur when resources are taken from one person or organization and acquired by another, but they remain within society. For example—

- The dollar value of cash and property lost through robberies, burglaries, theft, embezzlement, and fraud is "transferred" to the offender.
- Additional costs of goods and services to consumers are charged by manufacturers and retailers to cover their losses from crime.
- Income tax evasion victimizes the government and other taxpayers who must pay higher taxes as a result.

A third type of economic cost of crime to society occurs in what is often called the "underground economy." This consists of consensual crimes where both parties agree to participate in the illegal activity. Examples of the underground economy are illegal gambling, prostitution, drug purchases, knowingly buying stolen property, and so on.

Some costs of crime have been measured

Most estimates of the *total* cost of crime to society are made by summing estimates of its individual components. Some of these recent estimates are—

- **Personal crimes of violence and theft** and the **household crimes** of burglary, larceny, and motor vehicle theft cost their victims $13 billion in 1985.
  —In 1981 most losses were from theft of property or cash (92%); 6% were from property damage and 2% from medical expenses.[2]
  —$3.9 billion (36% of all losses) were recovered or reimbursed within 6 months after the offense.

- **Net losses from robbery, burglary, and larceny** of banks was estimated at $37 million in 1982 by Abt Associates, Inc., using FBI data.[3] The losses from commercial robberies and burglaries can be estimated using FBI data at $1.1 billion in 1982.

- **Drug abuse** costs to American society were estimated by Research Triangle Institute to be $59.7 billion in 1983.[4]
  —Half the cost is in lost productivity by drug users.
  —A third is crime-related (the cost to the criminal justice system and the private security industry attributable to drug-related crimes, property damage by drug users, and lost employment of crime victims).
  —Social welfare expenditure such as disability payments, unemployment compensation, workers compensation, public assistance, and food stamps resulting from drug abuse were estimated at another $115 million.
  —Health care services related to drug abuse and drug abuse treatment programs cost an additional $2 billion, and medicare reimbursements resulting from drug abuse were $100 million.

- **Credit and charge card fraud** may cost as much as $500 million according to Federal Trade Commission 1984 estimates.[5]

- **Automated teller machine fraud** in 1983 lost banks between $70 million and $100 million, a BJS study estimated.[6]

- **Counterfeit notes and currency** valued at a total of $71.8 million by the U.S. Secret Service either were passed to the public or were seized before they could be passed.[7] Of this, close to $64 million were seized before they could be circulated, but $7.8 million found their way into general circulation.

- **Drunk driving** caused motor vehicle crashes costing $13.2 billion in 1983 according to Research Triangle Institute estimates.[8]

- **Federal income tax evasion** was estimated by the Internal Revenue Service at $81.5 billion in 1981, including failure to report income and overstatement of deductions.[9]

- **Private security costs** for 1980 were estimated to be $21.7 billion by *Security World* magazine.[10]

- The **criminal justice system** cost the Federal, State, and local governments $45.6 billion in 1985, according to BJS.[11]

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How much does government spend for justice?

In 1985 less than 3% of all government spending was for criminal and civil justice

Of this amount—
- 1.4% was for police protection
- .8% was for corrections
- .6% was for judicial services, such as courts, prosecution, and public defense.

By long tradition in this country, criminal justice is primarily a function of State and local governments. In examining how much is spent to maintain criminal justice systems throughout the Nation, it is useful to compare criminal justice expenses with all government expenses—Federal, State, and local—to give an overall picture of how tax dollars are spent.

The estimated 2.9% of all spending for criminal and civil justice services by all levels of government in 1985 compares with about—
- 21% for social insurance payments
- 18% for national defense and international relations
- 13% for education
- 11% for interest on the debt
- 7% for housing and the environment
- 6% for public welfare
- 4% for hospitals and health care
- 3.6% for transportation
- 0.5% for space research and technology.

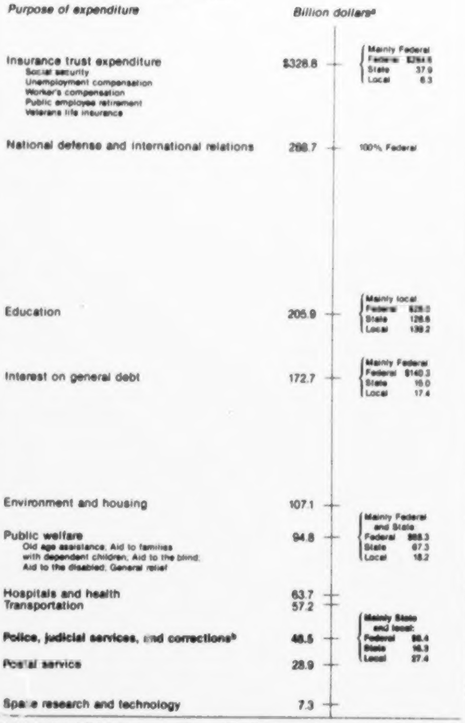
State and local governments spend a larger share of their total budgets for criminal justice than the Federal Government

In 1985 less than 1% of Federal spending was for justice activities, compared with 5% of State spending, 13% of county spending, and 10% of municipal spending.

The Federal Government proportion is lower than that of other governments because—
- it has jurisdiction over only a small portion of civil and criminal cases
- it has sole responsibility for national defense and international relations, which consumed 28% of its expenditures in 1985
- it is almost solely responsible for Social Security and other social insurance payments, which accounted for an additional 28% of its 1985 expenditure.

Police and corrections account for a small portion of government spending

Federal, State, and local spending for selected government functions, 1985



[a] Does not include $187.8 billion in seven additional categories—see source for itemization. Detail by level of government does not equal totals because duplicative intergovernmental amounts are excluded from totals.

[b] This is the amount reported in source; it differs from the amount in the primary source used in the rest of this chapter.

Source: *Governmental finances in 1984-85*, U.S. Bureau of the Census

Patterns of justice financing and spending highlight the different responsibilities at each level of government

State and local governments pay 88% of all government costs for criminal and civil justice

Level of government	1985 justice expenditure (billions)
Local	$25.3
State	14.7
Federal	5.7
Total*	$45.6

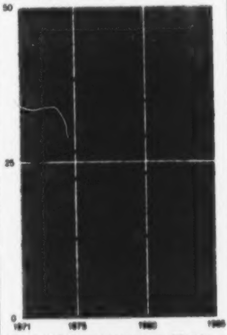
*Does not add to total because of rounding

The dominance of State and local governments in justice spending shows clearly that they, not the Federal Government, have primary responsibility for criminal justice in this country.

Spending by local governments exceeds that of State governments because municipalities have the main responsibility for police protection, which accounts for 48% of all justice spending. In fact, municipal spending for police alone amounts to 27% of all justice spending in the country.

The dominance of municipal spending for the justice system is diminishing

Percent of direct government spending for the justice system



Data for 1980-84 are estimates as no data were collected in those years.

Source: BJS *Justice expenditure and employment in the U.S., 1971-79 and 1985.*

State and county shares of justice system costs are increasing

Between 1971 and 1985 the share of total government spending for criminal and civil justice by—
- States rose from 26% to 32%
- Counties rose from 20% to 23%
- Federal agencies rose from 12% to 13%
- Municipalities fell from 42% to 32%

This change is due mainly to State and county governments taking responsibility for justice functions that had been carried by other levels of government. For example, several States have set up a system of State courts that replaced some county and municipal courts. The States' share of total government spending for courts rose from 23% in 1971 to 37% in 1985. The increased shares for States and counties also reflect large increases in correctional costs borne by those levels of government.

Cities and towns spend most of their justice dollars for police protection

In 1985 cities, towns, and townships spent—
- 83% for police
- 7% for corrections
- 4% for courts
- 4% for prosecution and legal services
- 6% for public defense
- 2% for all other justice activities

Per capita costs for police protection are higher for large than for smaller cities

The per capita spending for police protection varies by city size

1980 city size	1985 per capita spending for police
50,000 to 74,999	$ 75.51
75,000 to 99,999	81.29
100,000 to 249,999	88.86
250,000 to 499,999	107.72
500,000 and more	134.45

State governments spend more than half their justice dollars on corrections

In 1985 State governments spent—
- 55% for corrections
- 22% for police protection
- 15% for courts
- 5% for prosecution and legal services
- 2% for public defense

Of State government spending for corrections, 84% was for the construction, operation, and upkeep of correctional institutions (including 13% for capital outlays);[12] 10% for probation, parole, and pardon programs, and 7% for other correctional activities.

Corrections spending accounted for 3% of all State government spending in 1985

In 35 States, between 2% and 4% of all State spending was for corrections costs, such as the operation, maintenance, and construction of prisons and halfway houses and running probation and parole programs.

Of State government spending—
- 33% was for education
- 17% for public welfare
- 10% for transportation and highways
- 8% for health and hospitals
- 5% for justice
- 4% for interest on debt
- 3% for the environment and housing

Counties spend the most for court-related functions

Counties spent $3.5 billion (35%) of the total of $10.1 billion spent in 1985 by all levels of government for courts, prosecution, legal services, and public defense. State governments spent 32% of the total; the Federal Government, 20%; and municipalities, 14%. While county governments contribute the most to court-related functions, these functions do not dominate county justice spending to the extent that police protection dominates municipal spending or corrections dominates State spending.

In 1985 counties spent—
- 34% of all their justice dollars for court-related functions (20.8% for courts, 9.6% for prosecution and legal services, and 3.3% for public defense)
- 35% for police protection, usually county sheriffs or police
- 31% for corrections, primarily jails

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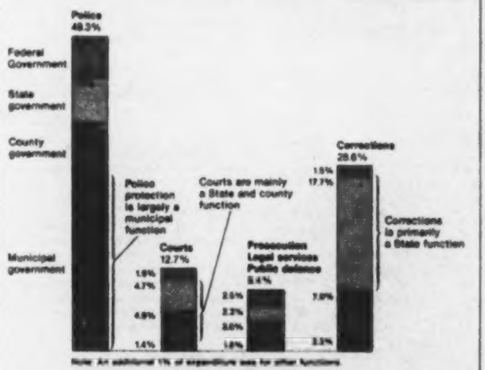
In most States, local spending for justice exceeds State government spending

	Percent distribution of direct justice spending		
	Local		
	County	Municipal	State
U.S. total	26%	37%	37%
Alabama	21	29	49
Alaska	2	17	81
Arizona	31	36	34
Arkansas	24	32	45
California	42	31	27
Colorado	22	44	35
Connecticut	0	45	55
Delaware	13	15	72
Florida	37	26	37
Georgia	36	24	41
Hawaii	14	36	49
Idaho	34	27	39
Illinois	21	46	33
Indiana	23	37	41
Iowa	30	32	38
Kansas	23	34	44
Kentucky	18	24	58
Louisiana	25	35	40
Maine	13	35	53
Maryland	31	20	49
Massachusetts	5	45	51
Michigan	27	36	37
Minnesota	40	31	29
Mississippi	24	31	45
Missouri	20	45	35
Montana	37	20	44
Nebraska	25	34	41
Nevada	55	17	27
New Hampshire	10	42	48
New Jersey	23	42	35
New Mexico	14	29	57
New York	15	49	36
North Carolina	16	27	57
North Dakota	34	31	35
Ohio	31	42	27
Oklahoma	12	36	53
Oregon	27	26	48
Pennsylvania	22	49	29
Rhode Island	0	48	52
South Carolina	25	19	56
South Dakota	25	24	52
Tennessee	25	38	37
Texas	33	39	28
Utah	26	28	46
Vermont	2	23	76
Virginia	24	31	45
Washington	37	27	36
West Virginia	27	23	50
Wisconsin	30	37	34
Wyoming	29	29	42

Source: BJS *Justice expenditure and employment in the U.S., 1985*, forthcoming.

48 cents of every justice dollar is spent for police protection



Note: An additional 1% of expenditure was for other functions.

Source: BJS *Justice expenditure and employment in the U.S., 1985*.

Criminal justice services are funded predominantly by taxes raised in the jurisdiction where the services are performed

In addition to taxes, other sources of revenue are also used for justice services. These include bond proceeds, fees and fines, forfeiture of assets in criminal cases, and unrestricted State aid such as sales tax distributions.

Governments also receive "intergovernmental payments" from other governments. Such payments move in many directions. They may be payments from the Federal Government to a State or local government, from a State government to a county or city, from one local government to another, or, more rarely, from a State or local government to the Federal Government.

- State and local governments used close to $1 billion from the Federal Government for criminal and civil justice in 1985.
- Local governments received close to $1.4 billion from their State governments; this included an unknown amount of Federal funds that were being "passed through" the State government.[13]
- State governments received $113 million from local governments in their States.
- Local governments received $255 million from other local governments. These payments were mainly reimbursements for services such as those performed when a county provides police protection for a city.

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Private sector involvement in the criminal justice system is growing

Governments are making greater use of the private sector to perform criminal justice services

Using the private sector to perform functions once performed by the public sector is known as "privatization," a word not well known outside of government, where it has been used for several years. In 1983 it was added to *Webster's ninth new collegiate dictionary* as a derivative noun of "privatize," defined as "to make private, esp. to change (as a business or industry) from public to private control or ownership."

Historically, many criminal justice functions, including law enforcement and prosecution, were performed by the private sector. With the advent of public policing and prisons in the 19th century, many criminal justice functions became responsibilities of government. However, governments have long used the private sector to perform certain functions, and this practice has been increasing in recent years. A 1985 survey of State general services officials by the Council of State Governments showed that most States contract with private firms for legal, medical, engineering, and technical professional services. Such State and local government spending for private sector services grew from $27.4 billion in 1975 to $66.8 billion in 1980 and to $81 billion in 1982.

Privatization in criminal justice often refers to private sector involvement in corrections

Type	Historical background
Contracting for services—A government agency enters into a contract with a private firm to provide a service. Contracts are used for food, laundry, or medical services for a correctional institution, education or vocational training for inmates, and staff training.	Contracts for correctional services and programs have been used for many years and are quite common. George and Camille Camp found that such contracts were used more by juvenile than by adult facilities. They also found that most adult and juvenile correctional facilities plan to expand their use of private contracts for specific services.
Prison industries—A government agency enters into an agreement with a private firm to operate an industry or business within the prison using inmates as employees. As of January 1985, Sexton et al. identified 26 projects with private sector involvement in State-level prison industries, including • Hotel and motel telephone reservation systems located inside of prisons, through which inmates answer the phones and make reservations for customers who do not know they are talking to a prisoner. • Factories installed in the prison and managed by private sector employees who supervise the prison inmate "factory workers." These factories manufacture various items, including office furniture and computer equipment.	In the early 19th century the private sector was the most frequent employer of convict labor. Opposition from rival manufacturers grew until the Great Depression, when, coupled with concern about the treatment of prisoners, Congress and many State legislatures passed laws that resulted in a decrease in this practice. By the 1970s, prison industries came to be viewed as State-supported vocational training programs to rehabilitate inmates while, at the same time, providing some revenue for the State. Currently, the role of the private sector in prison industries is being reexamined and expanded.

Private firms and individuals perform services in all criminal justice sectors

- Criminal justice agencies often contract with private firms to provide janitorial, food service, medical, training, computer support, and similar services.
- Corporations, retail establishments, and governments hire private police to provide security in the workplace, at residences, and in shopping areas. (See chapter IV for a detailed discussion of private security.)
- Arrested persons often use private bail bondsmen to obtain money to gain release from detention pending trial.
- Prosecutors and defense attorneys hire private expert witnesses to assess and develop evidence and testify in court.
- Courts and other justice agencies hire private attorneys to represent indigent defendants.
- Private process servers deliver subpoenas and other court documents.
- Courts use private firms to provide stenographic and transcription services for trials.
- Courts place persons who appear in proceedings before them in private treatment programs, sometimes as a condition of probation and sometimes as a final disposition. Juveniles in particular are likely to be placed in private facilities.

Private prisons have become one of the most hotly debated issues in criminal justice today

Supporters of private prisons point to other areas that have been "privatized" as models, including hospitals, health care, and nursing homes. These proponents argue that—

- The private sector can more quickly and cheaply build prisons and ease overcrowding by avoiding bureaucratic red tape and the need for voter approval for financing prison construction.
- The private sector can more quickly implement new ideas and programs to better perform correctional functions.

Type	Historical background
Private sector financing of prison construction—A private firm provides the funds needed to build a correctional institution and signs a long-term agreement to lease the institution to the government. Mullen found that these financial arrangements were being seriously considered in a number of States in 1984 and had been used for a $30.2 million jail and sheriff's facility in Colorado, a $50 million jail in Philadelphia, a $5 million jail in Tennessee, and a jail and criminal justice training center in Los Angeles.	A more recently developed form of privatization of corrections is private sector financing of prison and jail construction. Traditionally, prison and jail construction has been financed with a government's current operating funds and general obligation bonds. The use of current funds avoids having to pay interest, but it can become problematic if cost overruns exceed available cash. General obligation bonds require the payment of interest and the approval of the voters, who may balk at the prospect of the high costs of prison construction. Private sector investment avoids some of these difficulties. By signing a long-term lease/purchase agreement with the private investors, the government needs only to pay the "rent" for the institution. As attractive as this concept may seem, issues have been raised about it because it circumvents the public approval process.
Private facility ownership and operation—A private firm locates a site, builds a prison (or remodels an existing structure), and runs the prison on a day-to-day basis under contract with the government. The government pays the firm for all expenses under a contract, in many cases being charged a daily fee for each inmate. This type of arrangement has been used by the Federal Government to house illegal aliens and youthful offenders, by a few local governments for jails, and by State and local governments for juveniles, halfway houses, and small minimum-security facilities. Despite the willingness of private corrections firms to operate large, maximum-security prisons, State governments have moved slowly in this area.	Private prisons, or "prisons for profit" as they are called by some, are another recent concept in private sector involvement in corrections. Like private sector financing of prison construction, it avoids some of the problems corrections officials have encountered in locating prison sites and gaining voter approval for construction of correctional institutions. Again, like private sector financing, issues have been raised about this particular form of private involvement in corrections.

- The private sector can perform correctional functions more efficiently and less expensively than the public sector.

These arguments are appealing to government officials faced with increasing prison populations and limited resources for corrections, but there are a number of legal and ethical issues that are causing them to proceed cautiously.

- Can the government delegate its powers to incarcerate persons to a private firm?
- Can a private firm deprive persons of their liberty and exercise coercive authority, perhaps through use of deadly force?
- Who would be legally liable in the event of law suits?
- Who would be responsible for maintaining the prison if the private employees go on strike?
- Would a private company have the right to refuse to accept certain types of inmates, for example, those with AIDS?
- If a private firm went bankrupt, who would be responsible for the inmates and the facility?
- Could a private company reduce staff salaries or hire nonunion members as a way of reducing costs?
- Would the "profit motive" operate to the detriment of the government or the inmates, either by keeping inmates in prison who should be released or by reducing services to a point at which inmates, guards, and the public were endangered?
- What options would a government with no facility of its own have if it became dissatisfied with the performance of the private firm?
- Is it appropriate for the government to circumvent the public's right to vote to increase debt ceilings?

So far, not enough private facilities have been in existence long enough to complete the evaluations needed to answer the questions that have been raised. It is clear, however, that the issues will continue to be debated and that more and perhaps other types of private facilities will open in the future.

Many States are pondering private sector options in corrections, but few have opened private facilities

The issues that have come up about privatization of corrections are being debated in correctional departments, governors' offices, and State legislatures. A survey of State legislative staff to identify the issues that would take precedence during their 1986 legislative sessions found that 18 of the 29 States responding reported that one or more aspects of privatization of corrections will be a major issue for legislative attention during 1986.[14]

Privatization aspect	Number of States
Contracts for services	11
Private financing	10
Operation/management of—	
adult facilities	9
juvenile facilities	7
Prison industries	6
Number of States responding	29

Between 1980 and January 1, 1986, 13 private jails and prisons opened in 9 States. Seven of these were under contract to the U.S. Immigration and Naturalization Service. The total capacity of these institutions (1,910 beds) represents about a quarter of 1% of the total incarcerated adult population.

What are the trends in justice spending?

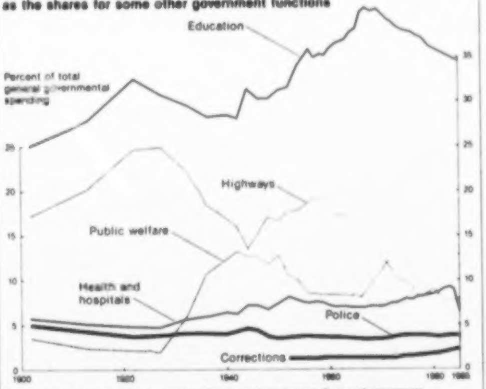
Governments adjust spending patterns in response to changing needs of society and shifts in the public's demand for services

Correction's share of State and local spending has increased by more than 75%, from 1.3% to 2.3%, since 1952, when data first became available. In the first half of the current decade alone, this share has grown by a third, from 1.7% in 1980. Such dramatic changes are not seen in spending for police protection, which fluctuated between 3% and 5% of all State and local general spending during 1902–85. Police protection, however, is primarily the function of municipal governments. Cities of more than 50,000 population devoted 15% of their total spending for police in 1985, after gradually increasing their spending from 12% in the 1950s.

Education's share of total general spending by State and local governments grew from 25% in 1902 to about 40% in the 1960s as the post-World War II babies moved through the public school system. But by 1985, education's share had dropped to a 25-year low of 35%.

The impact of the Great Depression and resulting social insurance programs can be seen on spending for public welfare.[15] In 1927, 2% of all general spending by State and local governments was for welfare. Five years later it had nearly tripled; it peaked at close to 13% in 1950. During the 1950s and 1960s, it leveled off at 8–9% of government spending; these were years of relatively strong economic growth and low unemployment. By the 1970s, welfare began consuming a larger share of State and local spending as the economy worsened and increasing numbers of older Americans became eligible for Medicaid benefits. This percentage has remained relatively steady since 1980, ranging from 12.8% to 13.3%.

During this century, the police and corrections shares of State and local spending have not fluctuated as radically as the shares for some other government functions



Sources: *Historical statistics of governmental finances and employment*, *Census of governments*, 1977 and 1982; *Governmental finances in 1979-80* and *1984-85*, U.S. Bureau of the Census.

Per capita spending by State and local governments for police and corrections increased more rapidly than for some other government functions during the past quarter century

	Per capita spending in constant 1985 dollars*						
	1960	1965	1970	1975	1980	1985	% change 1960–85
Education	$517	$588	$710	$807	$824	$807	+56%
Public welfare	95	120	209	268	292	300	+216
Hospitals and health care	95	113	148	182	193	208	+119
Highways	239	280	247	204	189	189	−21
Police protection	51	58	70	83	82	88	+73
Corrections	17	21	25	32	38	54	+218

*See technical appendix for details on methodology used to produce constant dollars.

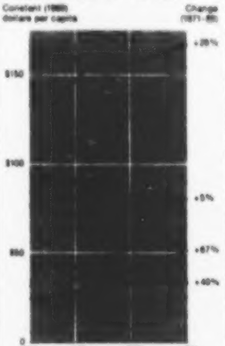
Sources: *Historical statistics of governmental finances and employment*, *Census of Governments*, 1977 and 1982; *Governmental finances in 1979-80* and *1984-85*, U.S. Bureau of the Census.

During 1960–85, per capita spending grew faster for corrections than for police protection

In constant dollars, State and local spending per capita for corrections grew during 1960–85 by 218% while the growth rate for police protection was only a third of this, or 73%. Since 1980 spending for corrections has grown by 42%, compared with 7% for police protection. Since 1960, spending for public welfare grew by 216%, hospitals and health care, by 119%, and education, by 56%; highway spending declined by 21%.[16]

State and local general spending, $2,321 per capita in 1985, included—
- $807 for education
- $300 for welfare
- $208 for hospitals and health care
- $189 for highways
- $88 for police protection
- $54 for corrections
- $675 for all other functions

State and local spending for all justice functions increased from 1971 to 1985



See technical appendix for inflation adjustment factors. Source: *Expenditure and employment data for the criminal justice system, 1969-70*; BJS *Justice expenditure and employment in the U.S., 1979 and 1985.*

All spending for criminal and civil justice rose steadily until 1978, then leveled off, resuming growth in the early 1980s

In constant 1985 dollars State and local per capita spending for justice grew at an annual average of 3% between 1971 and 1976. Between 1976 and 1979 it grew by less than .25% a year. Between 1978 and 1979 it fell by 1.8%. Since 1979 its rate of growth has been about 1.3% per year on average. By 1985 per capita spending was $167.

Per capita spending for—

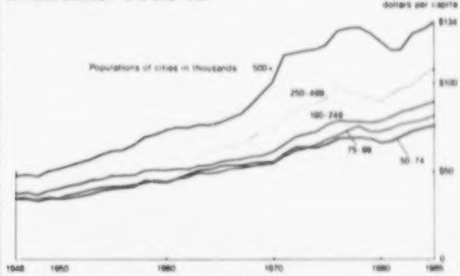
- **Police** grew steadily until 1976, fell in 1977, rose slightly in 1978, and fell again in 1979. By 1985 police per capita spending was at $80.62, an 11-year low.
- All **court-related functions** grew steadily until 1976, but court spending leveled off in 1977, and then again grew slightly until reaching $33.81 per capita in 1985.
- **Corrections** grew steadily until 1978, slowed in 1979, then rose by 34% between 1979 and 1985, when it reached $51.64 per capita.
- **Other criminal justice functions** like planning, information, and communication systems that serve more than one criminal justice function and general criminal justice training programs tripled between 1971 and 1976, before leveling off in 1977, and falling close to the 1971 level in 1985. This pattern reflects the impact of the rapidly increasing Law Enforcement Assistance Administration block grant program in the early 1970s and its demise in 1979-80.

Since 1979, spending rose faster for corrections than for any other justice function, while spending for police fell

Between 1979 and 1985 per capita spending in 1985 constant dollars for—

- corrections grew by 34.1%
- public defense grew by 24.7%
- prosecution grew by 6.8%
- courts grew by 0.2%
- police protection *fell* by 1.5% overall but it grew for cities with populations of more than 50,000
- other justice functions *fell* by 40.2%

Cities over 50,000 population increased spending for police services between 1946 and 1985



See technical appendix for inflation adjustment procedures.
Source: "City police expenditure data: 1946-1985," compiled from U.S. Bureau of the Census surveys of government finance, 1946-85.

In cities with populations of more than 50,000, per capita spending for police grew rapidly in the 30 years between 1946 and 1976, then growth leveled off, and, in some cases, declined. Beginning in the early 1980s, however, growth in city spending for police resumed, reaching levels close to those prevailing in the mid-1970s. Over the period, police spending grew faster in larger than in smaller cities of this group.

1980 city size	Percent change 1946-85
500,000 or more	186.8%
250,000-499,999	193.1
100,000-249,999	145.1
75,000-99,999	136.8
50,000-74,999	124.3

What factors are related to per capita spending?

Many factors are believed to affect how much a State spends for criminal justice

Some States may need to spend more on justice activities because they have a more serious crime problem than others. The citizens of some States may express greater concern about crime than those in other States and convince their elected officials to assign higher priority to funding criminal justice than to other government activities such as education or transportation. Some States are "richer" than others, having a larger tax base from which to fund government activities. The citizens of some States may be more willing than those in other States to tax themselves to fund governmental programs in general.

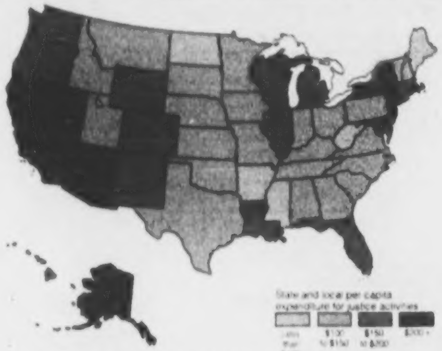
Per capita justice costs vary by State from less than $100 to as much as $582

State and local governments spent an average of $167 per capita for justice services in 1985.

In 1985 State and local governments in Arkansas, Maine, Mississippi, North Dakota, and West Virginia spent less than $100 per capita for justice services. Alaska spent $592, New York, $293, and Nevada, $244.

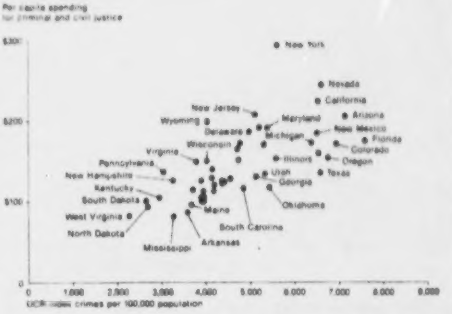
Regional variation is also evident. Per capita spending for justice was—
- $208 in the Northeast
- $205 in the West
- $140 in the South
- $140 in the Midwest

The Northeast and West lead the Nation in justice costs per capita


State and local per capita expenditure for justice activities
Less than $100
$100 to $150
$150 to $200
$200+

Source: Justice expenditure and employment, 1985, BJS Bulletin, March 1987.

States with high crime rates tend to have high expenditures for criminal and civil justice



Sources: *Justice expenditure and employment in the U.S., 1985*, BJS Bulletin, March 1987. FBI *Crime in the United States, 1985*.

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What do justice dollars buy?

The cost of bringing an offender to justice is highly variable and includes many "hidden costs"

The costs of convicting an offender are many and varied. They include paying for—

- Police to investigate criminal events, arrest offenders, and appear as witnesses in court (often on overtime)
- Public defenders and assigned counsel to represent indigent defendants
- Prosecutors to investigate, prepare and present the case in court
- Judges and juries to hear the evidence and reach a verdict
- The probation department to prepare presentence investigation reports for the judge to use in sentencing
- State identification and information bureaus to check fingerprints and criminal histories of defendants
- Local jails to house defendants who are detained in pretrial custody

Different criminal cases vary greatly in cost

The price of justice, a 1981 study of three "typical" New York City robbery cases, found that the cost of arresting, prosecuting, and trying the defendants ranged from $851 to $32,627, not including correctional costs after trial. In each of the cases, the defendants were arrested shortly after the crime, eliminating the need for long and costly police investigation.

In the first case, the defendants pleaded guilty to a reduced charge the day after their arrest. Beyond arrest and booking, the costs were minimal. Each defendant received a 6-month sentence.

The second case cost $6,665. The defendant pleaded guilty after being indicted, but before trial. Seventy percent of the total cost was for pretrial detention; 68 days after arrest, the defendant received a sentence of 4 to 12 years of imprisonment for the plea of guilty to robbery.

In the third case, the defendant chose to go to a felony trial in which he was found guilty of robbery and sentenced to 9 to 18 years; 250 days had elapsed between arrest and sentencing. The total cost was $32,627, half of which was for pretrial detention.

Justice dollars are used to compensate victims, to investigate crimes, and to apprehend, try, and punish offenders

Victim compensation (1980 and 1981)	
Average maximum award	$18,000 per award
Average award	$3,000 per award
Investigative and court costs	
A State or Federal wiretap (1986)	$35,508 per wiretap
To protect a Federal witness (1986)	$118,200 per year
Juror payment (1986)—	
State	$10 per day
Federal	$30 per day
Court case (1982)—	
California Superior Court	$5 per minute
Florida Circuit Court	$4 per minute
Washington State Superior Court	$4 per minute
U.S. District Courts	$9 per minute
To arrest, prosecute, and try a robbery case in New York City (1981)—	
with guilty plea and sentencing day after arrest	$851 per case
with guilty plea after indictment and sentencing 68 days after arrest	$6,665 per case
with trial disposition and sentencing 250 days after arrest	$32,627 per case
Most frequent assigned counsel hourly rate (1982)—	
Out-of-court	$20-30 per hour
In court	$30-50 per hour
Average indigent defense case (1982)	$196 per case
Corrections operations costs	
For one adult offender—	
in a Federal prison (1986)	$13,162 per year
in a State prison (1984)	$11,302 per year
in a State-operated, community-based facility (1984)	$7,951 per year
in a local jail (1983)	$9,360 per year
on Federal probation or parole (1986)	$1,316 per year
on State probation (1985)	$584 per year
on State parole (1985)	$702 per year
For housing—	
an unsentenced Federal prisoner in a local jail (1986)	$36 per day
a sentenced Federal prisoner	
in a local community treatment center (1986)	$30 per day
in a jail (1986)	$33 per day
For housing—	
one resident in a public juvenile facility (1985)	$25,200 per year
Prison industry wage (1985)	$0.24-1.02 per hour

Note: Multiple sources supplied the data in this table. Ranges are presented when the source did not provide enough information to compute an average. The list of sources for this table is available from BJS either in the technical appendix or separately upon request.

Courts process many kinds of cases with widely varying costs

State courts handle about the same number of civil as criminal cases; in Federal courts civil cases outnumber criminal cases by 6 to 1. In most instances the same court handles both types of cases.

There is no agreed-upon method of dividing national court expenses between civil and criminal workloads to arrive at the total cost of criminal vs civil cases. It is clear, however, that costs of processing different kinds of cases vary enormously. For example, the clerk of court may only have to file documents to probate an uncontested will, but months of effort are required to provide for a jury trial in a complex personal injury suit or murder case.

What are the operating costs of correctional sanctions?

The 1984 Census of State Adult Correctional Facilities found a wide range ($5,797-$23,233) in the operating cost per prisoner among the States. Factors affecting this range include—

- regional variations in salaries that reflect differences in cost-of-living and union contracts
- differences in utility costs and in the need for heating fuel

- differences in types of institutions operated (for example, a State may have a higher-than-average percentage of prisoners in less expensive minimum security)
- differences in the extent to which the prison uses prisoners rather than hiring nonprisoners to perform maintenance services.

The Census found that there is not much difference in the cost per inmate per year between maximum and medium security facilities ($11,336 vs $11,652). Minimum security facilities are somewhat less expensive, as are State-operated, community-based facilities, such as halfway houses. In those community facilities, the cost per inmate was $7,951, ranging from $4,767 to $27,400. The wide range is due to differences in the types and intensity of treatment used; for example, a program with highly trained therapists is more expensive than one that is almost solely custodial.

The *Corrections yearbook* found that across 46 State parole agencies, the average annual cost of maintaining a person on parole was $702. The annual average cost for a person on probation across 44 State agencies was $584.

Savings from housing offenders in the community rather than in confinement can be misleading

A study on the cost of prosecuting repeat felony offenders in Salt Lake County, Utah, found that probationers who commit crime while on probation and are prosecuted for it very quickly cost victims and the criminal justice system the amount of money "saved" by not incarcerating them for their earlier crime. Repeat offenders (some of whom commit hundreds of crimes a year) can cost society many times over the cost of incarceration if they recidivate while in a community-based facility or on probation or parole.

Widely divergent estimates of the construction cost per prison bed are found in various studies, reports, and media accounts

There are many reasons for the variation:

Justice dollars also are used for buildings and equipment

New correctional facility costs: Construction cost per bed in a—	
maximum security State prison (1985)	$70,768 per bed
medium security State prison (1985)	$53,360 per bed
minimum security State prison (1985)	$29,599 per bed
"constitutional" jail (1982)	$43,000 per bed
juvenile facility (1985)	$26,470 per bed
Average remodeling for additions to prisons (1985)	$19,944 per bed
New courthouse construction costs (1982)	$54–$65 per sq. ft
Police car costs	
Average purchase price (1981)	$8,000 per car
To equip a new police car with—	
police radio (1981)	$2,000 per car
siren and light bar (1981)	$800 per car
other (1981)	$300 per car
To maintain and operate (not including patrol salary) (1981)	$6,000 per year
Resale value (1981)	$1,000 per car

Note: Multiple sources supplied the data in this table. Ranges are presented when the source did not provide enough information to compute an average. The list of sources for this table is available from BJS either in the technical appendix or separately upon request.

- Some sources include the purchase of the land, preparing the site, architects' fees, and long-term financing costs such as interest paid on bonds. Others do not.
- Figures for differing levels of security classification (for example, minimum security vs. maximum security) are used in different sources.
- Construction costs vary by region.
- Some prison construction cost is offset by using inexpensive prisoner labor.
- Some sources surveyed only "recently completed" construction. Others include the expected costs of future "approved" or "planned but not approved" construction.
- Prisons vary in the amount of space per prisoner and in space allowed for prisoner support programs such as medical and psychiatric treatment, athletics, and recreation.
- Some late 1970s estimates are based on data from early 1970 surveys that have been adjusted for inflation—adjustments using different methods with different results.

Maximum security prisons are clearly more expensive to build than medium security prisons, which in turn are more expensive than minimum security prisons. States reported to the *Corrections yearbook*, 1986, the following ranges of construction costs per prison bed for fiscal 1985—

Security type	Range	Average
Maximum	$21,525–$155,300	$70,768
Medium	$16,000–$125,000	$53,360
Minimum	$7,000–$112,842	$29,599

What are the costs of jail construction?

The estimate of $43,000 per jail bed, based on a 1982 survey of 34 "advanced practices" jails, is somewhat lower than that for maximum and medium security prisons because jails usually do not have extensive architectural security features such as perimeter walls and usually are designed to provide less area for recreation and rehabilitation activities because their inmates are held for shorter periods.[17]

Corrections officials are exploring ways to cut the high cost of prison and jail construction

The State of Virginia recently built two prisons, one using conventional construction management and the traditional poured concrete, concrete block, and brick. The other used factory prefabricated concrete panels. The second prison not only cost about a third less than it would have using conventional methods, it was completed in less than half the time.[18]

Other States have had similar success in reducing the cost of prison construction by using prefabricated building parts and innovative construction management techniques. Florida was able to open a 336-bed expansion unit at an existing prison complex at a cost of about $16,000 per cell. California was able to reduce the cost per cell from $90,000 to $50,000.[19]

How much does it cost to build a new courthouse?

Available information does not allow computation of the cost of building a new "average courtroom," as is often done for prison cells. Walter H. Sobel, F.A.I.A. and Associates' 1982 survey of nine recently built courthouse projects found these variations:

- In one courthouse, 29% of the square footage was for jail cells, which cost more to build than courtrooms.
- Two projects included large underground parking garages, which cost more than outdoor parking lots.
- Some projects included "shelling in" space for courtrooms to be completed in the future.
- Different courthouses have different mixes of space allocated for courtrooms and judicial chambers (the most expensive type of nondetention construction) and administrative and support space (costing about the same as routine business offices).
- Regional factors in the construction industry also affect the cost of courthouses.

The price per square foot of construction in three newly built courthouses that appeared to be the most comparable were $54, $61, and $65. One other project involved completing a shell that had been built earlier. The cost per square foot was $54, higher than might be expected because the courthouse was limited to courtrooms and judges' chambers. Two renovation efforts were reported, costing $36 and $67 per square foot, the range reflecting the extent of the renovation effort.

The purchase price for a police car ranged from $8,700 to $9,500 in 25 jurisdictions

The purchase price is only part of the cost of putting a patrol car on the streets. In a 1982 survey the National Association of Criminal Justice Planners found that police radios ranged in cost from $1,200 to $4,300 in the nine jurisdictions providing this information; police sirens and light bars added another $350 to $1,300. Costs for other equipment were reported at $10 to $700; these include police department decals and shields for the patrol car, loudspeakers, security cages for prisoners, and shotguns and racks.

The annual operating cost for a police car, including gas, oil, maintenance, and repair, varied from $3,000 to $13,000. The factors affecting this range include the number of shifts the car is driven during the day, the type of driving involved (for example, city vs. suburban patrol), climate conditions, and the length of time the car is operated before being resold. This last factor is reflected in the range of resale value, reported at $550 to $4,500.

Some police investigation and court costs are not well known

The police sometimes pay informants for investigative information. Undercover agents may use cash to buy drugs or other illegal goods and services in an attempt to obtain evidence of criminal behavior. Police officers often are required in court as witnesses, frequently on overtime pay. In a 1982 survey, the National Association of Criminal Justice Planners found that in five jurisdictions three-quarters of all court appearances involved police overtime. For nine jurisdictions able to report cost data, the average overtime pay per court appearance was $41.

Courts pay private citizens for serving on jury duty. In 1986 the daily pay for jurors averaged about $10 per day. In some States a lower fee (or no fee) is paid for the first few days. Some States pay for half days and some pay on an hourly basis. In the Federal system in 1986, daily pay for jurors was $30. Most court systems also reimburse jurors for their travel expenses and pay living expenses for those serving on sequestered juries.

Another less well known expense is the cost of protecting witnesses. State and local governments engage in such activities, but the Federal Witness Security Program of the U.S. Marshals Service is clearly the largest and most extensive witness security program in the Nation. This program provides—

- protection and maintenance services for witnesses, potential witnesses, and dependents whose lives are in jeopardy as a result of testimony against organized crime figures.
- around-the-clock protection to witnesses while they are in a "hostile environment" and when they return to an area of danger for court testimony.
- geographic relocation for the witness and his or her dependents, housing, subsistence, new identification documents, and employment, medical, and other assistance to allow the witness to become self-sustaining.

In 1986 the U.S. Marshals Service provided protection or support for 1,714 persons, including 933 principal witnesses and 781 family members. The average annual cost per witness ranged from $47,500 for a person with no dependents in the program to $84,000 for one with eight dependents, with an average annual cost per witness of $56,000 for the salaries and expenses of marshals. There are now more than 12,500 participants in the Federal Witness Security Program, although not all are under the active protection of the U.S. Marshals.

Close to three-fourths of State and local justice dollars go for payroll

Criminal and civil justice is a highly "personnel-intensive" activity. In 1985 the payroll for State and local justice employees ranged from a high of 79% of all expenditures for police protection to a low of about 40% for public defense and "other justice" activities, such as planning commissions.[20]

The defender proportion of spending for salaries was low because of widespread use of "assigned counsel" defense systems in which the government pays private attorneys to represent indigent defendants. The National Criminal Defense Systems Study found that the fees paid to the attorneys have been reported to be as low as $10 and as high as $65 an hour but in most places the fee is between $20 and $30 an hour for out-of-court work and between $30 and $50 an hour for in-court work. Sometimes the hourly fee varies by the seriousness of the case and by whether it is at the trial or appeal stage. Some jurisdictions that do not use an hourly rate use minimum and maximum amounts of total compensation.

The payroll proportion of spending for "other justice" activities is low because this category contains many intergovernmental payments that do not require a large amount of staff support to oversee.

Salaries make up a relatively lower proportion of total spending for corrections (59%), primarily because of the costs of building and maintaining prisons, contracts for medical care and treatment programs, food, guard and prisoner uniforms, and boarding prisoners at other institutions.

Courts also have a relatively low proportion of total spending for salaries (71%) because of payments for jury and witness fees, courthouse maintenance, and purchase of books for law libraries.

Justice dollars pay personnel costs

(Average annual salary. There are jurisdictions where the salaries are higher or lower than these averages.)	$
Law enforcement officers (1985 and 1986)	
City police officer (entry level)	$18,913
City police officer (maximum)	$24,243
City police chief	$33,158
County sheriff patrol officer	Not available
State trooper (entry level)	$18,170
State trooper (maximum)	$26,033
Deputy U.S. marshal	$19,585
U.S. border patrol agent	$23,058
U.S. immigration inspector	$24,719
U.S. immigration agent	$34,259
Federal drug agent	$36,973
FBI agent	$40,321
Prosecutors (1986)	
State and local prosecution personnel	Not available
Federal prosecutor	$53,027
Defenders (1986)	
State and local defense personnel	Not available
Federal defender	$43,582
Court personnel (1986 and 1987)	
State court administrator	$59,257
State general jurisdiction trial court judge	$60,697
State intermediate appellate court justice	$67,172
State associate supreme court justice	$67,434
State supreme court justice	$70,161
U.S. Magistrate	$72,500
U.S. Bankruptcy Court Judge	$72,500
U.S. Court of Claims Judge	$82,500
U.S. Court of International Trade Judge	$89,500
U.S. District (trial) Court Judge	$89,500
U.S. Circuit (appellate) Court Judge	$95,000
U.S. Supreme Court Associate Justice	$110,000
U.S. Supreme Court Chief Justice	$115,000
Correctional officers (adult facilities, 1986)	
Local jail officer (entry level)	$16,939
State correctional officer (entry level)	$14,985
State correctional officer (maximum)	$16,427
State director of corrections	$59,947
Federal correctional officer	$22,857
Probation and parole officers (adult clientele, 1986 and 1987)	
Local probation officer	Not available
State probation officer (entry level)	$19,402
State parole officer (entry level)	$19,986
State chief probation officer	$26,600
State chief parole officer	$31,233
State parole board member	$43,429
State parole board chairman	$46,100
Federal probation officer (entry level)	$22,458
Federal parole case analyst	$22,458-42,341
Federal parole hearing examiner	$36,727-59,488
Federal regional probation/parole administrator	$53,830-69,976
U.S. Parole Commissioner	$72,500

Note: Multiple sources supplied the data in this table. Ranges are presented when the source did not provide enough information to compute an average. The list of sources for this table is available from BJS either in the technical appendix or separately upon request.

Salaries for police and correctional officers are generally the lowest

Judges, because of their great responsibility, have the highest salaries of criminal and civil justice employees at each level of government. Current State and local prosecutor and public defender salaries are not available. The National Criminal Defense Systems Study found that in 1982 State and local full-time chief public defender salaries ranged from $6,000 to $66,000 (with most falling between $20,000 and $30,000) and that chief prosecutors for the most part had higher salaries. The salaries of State and local police officers are about the same as those of correctional personnel.

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[12] This does not include interest payments for loans used for long-term financing of construction projects because it is not possible to separate consistently such payments in the government records used to compile these data

[13] Data were not collected in enough detail to break out Federal payments being passed through State governments

[14] Mary Fairchild, "Criminal justice and the States: A preview of legislative issues," National Conference of State Legislatures, Denver, unpublished

[15] The State and local public welfare data illustrate changes in spending for social programs. The data do not include direct Federal assistance to individuals, such as Social Security, but they do include programs, such as Medicaid, that pass Federal money through State and local governments

[16] Long-term trends (1902-85, 1946-85, and 1960-85) for police and corrections are based on U.S. Census Bureau data, trends for 1971-85 are based on BJS data. Figures from the two sources for overlapping years vary somewhat. Because expenditure data from BJS are not available for employer contributions to fringe benefits, the rate of growth for 1971-85 is slightly understated. See technical appendix

[17] This estimate was made to assist local officials in planning to build jails that meet emerging national standards and thus would be less likely to encounter suits alleging violation of prisoners' constitutional rights. (*The costs of constitutional jails*, National Institute of Corrections, U.S. Department of Justice, 1982.)

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[20] See technical appendix for discussion of methodology for estimating payroll data

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IB81171

CRS Issue Brief

Prison Conditions: Congressional Response

Updated March 1989

William F. Woldman
Analyst in American National Government
Government Division

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SUMMARY

Approximately 605,000 offenders are currently housed in State and Federal prisons, and the prison population continues to increase each year. Most prisons are seriously overcrowded, and in some cases they are also antiquated, ill-equipped and understaffed; prisoners are often exposed to an unsafe environment and to brutalities by both staff and fellow inmates. It is generally agreed that prisons need improvements in both physical facilities and institutional programs. The Federal role in effecting such improvements is at issue. A drug control initiative (P.L. 99-570) added substantial funding for Federal prison construction in 1986. The recently passed Anti-Drug Abuse Act of 1988 (P.L. 100-690) contains additional funding authorization.

ISSUE DEFINITION

Approximately 605,000 offenders are currently housed in State and Federal prisons and the prison population continues to increase each year. It is generally agreed that prisons need improvements in both physical facilities and institutional programs. The Federal role in effecting such improvements is at issue. A 1986 drug control initiative (P.L. 99-570) added substantial funding for Federal prison construction. The recently passed Anti-Drug Abuse Act of 1988 (P.L. 100-690) authorizes additional funding for the Federal prison system.

BACKGROUND AND ANALYSIS

There is little dispute that most American prisons require improvements. The population of many prisons is at record levels and most correctional systems are seriously overcrowded. Not only are conditions in some prisons considered inhumane, but critics maintain that prisons apparently fail to protect society either through deterring offenders from crime after their release or through rehabilitating inmates.

A prison is generally defined as an institution of varying degrees of security, housing offenders sentenced to at least a year and a day for a criminal conviction. In the United States, 54 prisons under the jurisdiction of the Federal Government, with four more under construction, are used primarily to confine persons convicted of Federal crimes; about 600 institutions under the jurisdiction of State and territorial governments house violators of State or territorial laws.

Prisons are distinct from the Nation's nearly 3,500 jails, most of which are operated by local governments and are used to detain persons awaiting trial or offenders sentenced to short terms of confinement (less than a year). These facilities housed an additional 257,000 persons in 1985, up 9% from the preceding year.

Conditions of Prisons and Directions for Reform

Overcrowding

At present, the greatest and most immediate concern regarding U.S. prisons is overcrowding. Corrections officials have stated that overcrowding is no longer an emergency but a "disaster." A 1984 General Accounting Office (GAO) report projects that if current conditions remain unchanged, the Federal prison system will be 40% overcrowded by 1990, and that State facilities will be almost 26% overcrowded. Data compiled by the U.S. Bureau of Prisons indicate that the Federal prison system currently is about 53% over capacity.

There are estimates that the Comprehensive Crime Bill (career criminal provision), the Anti-Drug Abuse Act, and the new Federal sentencing guidelines will cause an increase in the Federal prison population by up to 56% over previous estimates by 1992. The Federal Bureau of Prisons estimates that Federal prisons will house a minimum 73,000 inmates by 1995.

The most recent data collected by the Bureau of Justice Statistics indicates a continued growth in the U.S. prison population. From 1980 to 1982, the total prison population increased 12% each year. From 1982 to 1983 it increased 5.7%, and from 1983 to 1984 the increase was 6.1%. The 1987 growth rate of 6.7% was the largest percentage since 1982. The number of sentenced Federal prisoners continued to grow at a faster rate that sentenced prisoners in the States during 1987 (8.2% vs. 6.5%). In the first 6 months of 1988, the population increased by 4.9%. The Federal population grew at a slower pace than the States (3.2% vs. 6.2%). In part the dramatic population growth during 1980-1982 was a result of the inclusion in Federal counts of 2,000 refugees held under the jurisdiction of the Immigration and Naturalization Service. The State prison population growth rate has declined from a high of 12.4% between 1981 and 1982 to 6% from 1983 to 1984. The most recent decline was to 4.6% between June 1985 and June 1986. However, recent trends show increases again.

To cope temporarily with prison overcrowding, some States have housed inmates in tents or prefabricated buildings, or have converted multi-use space such as conference rooms into bedspace. Also, some States are releasing inmates early or housing them in local jails. At the end of 1987, 12,220 inmates in 17 States were in local jail facilities because of overcrowding in State facilities.

States are building new facilities to expand their prison capacity. It is estimated that prison building projects totaling over $3 billion are currently underway in approximately 39 States. Each new cell will cost between $15,200 and $157,000 depending on security level and availability of land. The FY87 budget of the U.S. Department of Justice contained more than $140 million for the construction of three new medium security Federal corrections institutions and the addition of minimum security facilities at two current institutions adding a total of 2,500 bed spaces. The FY88 budget appropriated an additional $201.6 million for Federal prison construction. Additional language allows for the transfer of available funds from the Justice Department's assets forfeiture fund to the Federal prison system for the construction of correctional institutions. In FY89, $95.4 million will be available from these seized assets. The Anti-Drug Abuse Act of 1986 (P.L. 99-570) appropriated an additional $96.5 million for construction. In their current building plans, the Federal Bureau of Prisons forecasts that by 1995 it will be necessary to add 24,250 beds to the Federal prison system to adequately provide for anticipated growth and to simultaneously reduce overcrowding to 20% over capacity.

The FY89 budget for the Federal Bureau of Prisons contained $203,693,000 for the construction of two new Federal correctional institutions, and increases capacity at six existing facilities. This appropriation, coupled with the funds transferred from the assets forfeiture fund and the $95.6 million from the Anti-Drug Abuse Act of 1988 (P.L. 100-690), brings the total available for construction of Federal prisons in FY89 to $394,693,000.

Factors Behind Population Growth

Analysts point to a number of factors that have contributed to the growth in prison population. One is the "baby boom" of the 1950s and early 1960s that resulted in a large number of people now in the crime-prone age group of 16-25. Dr. Alfred Blumstein, an authority on crime statistics, has estimated that the baby boom will result in continued prison population increases throughout the 1980s.

Other major factors that have led to prison population growth are changes in the criminal justice system. According to the Bureau of Justice Statistics, during the last 7 years most jurisdictions have enacted mandatory sentencing laws and nine States have instituted determinate sentencing. Such laws require offenders to be incarcerated in prison for a fixed period that cannot be shortened by parole and tend to result in longer time served in prison. Also, stricter parole policies, longer sentences imposed by judges, less frequent use of alternatives to incarceration such as probation, and greater numbers of convictions influence prison population levels. Most experts agree that these factors, rather than increasing crime rates, have been responsible for the growth in the prison population.

Environment Conducive to Failure

In addition to being overcrowded, many prisons are antiquated, too large to operate efficiently, unsafe and understaffed. An estimated 43% of all prisoners are housed in facilities that were built before 1925. Nearly three-quarters of maximum security prisons were built to house over 1,000 inmates. The American Correctional Association (ACA) believes that it is "essential" that such institutions house no more than 500 inmates on the grounds of program management and security.

Many institutions also have unsafe and unsanitary conditions. A 1980 GAO report concluded that significant environmental health problems existed in the institutions of 10 of the 11 States it visited. GAO blamed not only lack of funds but also the failure of States to maintain a regular inspection program, a general neglect of maintenance, and inadequate training for corrections personnel.

Understaffing, coupled with overcrowding in prisons, can subject inmates to brutalities including assault, rape, extortion and theft. A recent study by the U.S. National Institute of Justice (NIJ) concluded that prisoners subjected to sustained overcrowding have a higher death and suicide rate, more disciplinary problems, and a larger number of illness complaints. Furthermore, the study suggested that large institutions produce more negative psychological and physiological effects than small institutions.

The extent to which conditions in prisons foster frustrations and resentments against society has been illustrated by major prison riots such as those at the Attica State Correctional Facility in New York and in New Mexico and Michigan.

Recidivism statistics have been cited in support of the contention that prisons fail to rehabilitate criminals and to deter future criminality. Studies have shown that about one-third of persons released from prison will be reimprisoned within 5 years, sometimes for violations more serous than the original charge.

Some analysts believe that prison conditions and their desocializing effects preclude rehabilitation while others claim the rehabilitation programs themselves have failed. As for the seeming failure of prisons to deter future offenses, some believe this is not a fault of prisons but of the whole criminal justice system. The system, they argue, fails to offer certain, swift and equitable punishment.

Development of Standards

Although most agree that prisons have suffered from years of neglect, there have been some notable improvements in prison conditions in some States. Not only have a number of prisons been built or renovated, but there have been improvements in such areas as environmental conditions, health care, and correctional programs aimed at equipping inmates with basic educational and vocational skills.

A number of groups have developed standards for U.S. prisons that have been used to guide reforms. The American Correctional Association (ACA) has developed general standards that cover all aspects of prison life including the physical plant, health care, inmates rights, staffing, educational, vocational, and social services. Since 1976 the Commission on Accreditation for Corrections (which helped developed the ACA standards but is now separate from that organization) has operated a voluntary accreditation program for correctional institutions based on compliance with the ACA standards. By the end of January 1988, 124 State and 19 Federal correctional institutions had been accredited.

Primarily in response to findings that current prison conditions violate the Constitutional protection from "cruel and unusual punishment", State and Federal judges also have set standards. According to a report by the National Prison Project, as of January 1989 the entire prison systems of 10 States were under court orders or consent decrees to remedy prison conditions, especially overcrowding. In 30 other States at least one major institution operates under a court order or consent decree. However, the Supreme Court identified limits to claims of unconstitutional prison conditions in 1981. In the case of Rhodes vs. Chapman, the Supreme Court found that housing two prisoners in a cell intended for one to relieve overcrowding is not in itself unconstitutional. The Court reiterated previous holdings to the effect that the Eighth Amendment does place limits on the conditions under which prisoners may be confined. However, according to the Court, double celling, unlike "deliberate indifference to an inmate's medical needs," does not constitute cruel and unusual punishment.

Prison Construction

Because of the overpopulation problem and prison conditions, some believe that prison construction and renovation should be a part of any prison reform program today. Whether such activities should actually expand prison capacity in addition to improving conditions is a matter of dispute.

Advocates of the construction of additional prison space believe that judges must have imprisonment as a sentencing option and that the current limits of prison capacity prevent this. They argue that the prison population will continue to grow because of higher crime rates, better detection and prosecution of offenders, and public demands for longer sentences.

The Attorney General's Task Force Report on Violent Crime (1981) recommended that any decision to build new prisons should take into consideration the makeup of the inmate population. For example, the higher the degree of security needed, the higher the construction and operating costs. Estimates indicate that today only 15% to 20% of inmates require maximum security while 70% of facilities offer such confinement.

Persons who oppose increases in prison capacity through new construction point to the extremely high cost. Although estimates range anywhere from $15,000 to $157,000 per cell, most agree that the expense of new construction to meet today's population needs would be staggering. A recent study for the National Institute of Justice by Abt Associates, a private consulting firm, concluded that it would cost between $8 and $10 billion to bring U.S. prisons up to minimum space standards. Abt used a standard of 60 square feet per inmate for the purposes of its analysis, as a reasonable reflection of space standards set by the American Correctional Association, the Federal Government, and court decisions. The Abt study questioned whether a massive construction effort would relieve overcrowding, citing the conclusions of some analyses that the more prison space available, the higher the rate of incarceration. In contrast, other analysts believe that in the 5 to 7 years it would take to build new facilities, the need for them will abate.

Others, including former Chief Justice Warren Burger, have urged increased attention to the development of alternatives to incarceration such as probation, restitution, and community service. Not only are such alternatives less costly than the amount needed to imprison an offender, it is argued, but alternative sentences are also believed to be more appropriate sanctions for some, particularly for non-violent offenders.

The previously mentioned Abt study, as well as a GAO report, have concluded that the problem of prison overcrowding will be eliminated only with criminal justice systemwide coordination and cooperation in recognizing specific limits of prison and jail space. Abt proposed that States should statutorily define minimum space standards for prison inmates that would establish the capacity of their prisons. As a second step, States should authorize accelerated release of inmates when the capacity is reached or exceeded. As part of this plan, States should develop an information system to apprise judges and releasing authorities of the relative "trade-offs" involved in their sentencing and release decisions.

Federal Role in Prison Reform

Under the U.S. Constitution, crime control has traditionally and primarily been the responsibility of State and local governments because the authority is not expressly granted to the Federal Government. The Federal Government primarily enacts and enforces Federal criminal law and assists States and localities in their efforts to cope with crime. Consequently, in the area of prison reform, the Federal role is limited to the policy and operations of the Federal prison system, and to the provision of assistance to States. A major issue currently before Congress is the extent to which the Federal Government should aid State prison systems, and how such aid should be provided.

The Federal role in prison reform is limited, but varied. For example, one role of the Federal prison system has been to provide guidance and leadership to the States and to serve as a model for reform. Federal legislation such as the Federal Prisoner Rehabilitation Act of 1965 (P.L. 89-176; 18 U.S.C. 4082) has served as a model in certain areas such as work release, halfway house programs, and emergency furloughs.

Federal financial assistance to improve prison facilities and programs was available through the Justice Department's Law Enforcement Assistance Administration (LEAA) from FY69 through FY80. Part E of LEAA's enabling legislation, Title I of the Omnibus Crime Control and Safe Streets Act (42 U.S.C. 3701, et seq.), authorized block and discretionary grants specifically for corrections activities, and some $800 million was expended under this program. In addition, LEAA's general block and discretionary grant program funded numerous corrections-related activities. From FY80 through FY83 no Federal funds were authorized for state prison construction. In 1984 the Omnibus Reconciliation Act (P.L. 98-473) authorized $25 million for each year from FY84 through FY88 for prison construction. These funds, limited to 20% of the estimated total cost of construction, were to be awarded to projects representing "a prototype of new and innovative methods and advanced design". These funds were to be administered by the Bureau of Justice Assistance and awarded with the concurrence of the Director of the National Institute of Corrections. The Administration's budget requested no funds for this program, however, and no funds were appropriated.

The National Institute of Corrections (NIC) provides Federal information assistance to the corrections community. Initially created as an administrative unit within the Justice Department in the early 1970s, the NIC was established by statute in 1974 (P.L. 93-415; 88 Stat. 1139; 18 U.S.C. 4351, et seq.). The NIC is a separate agency within the Federal Bureau of Prisons that provides both direct services and grants in the following areas: (1) training, (2) technical assistance, (3) research and evaluation, and (4) policy and standards formulation and implementation. The NIC also serves as an information clearinghouse. States have been assisted by the NIC in developing plans to comply with Federal court orders to improve conditions.

The Federal Government also may be involved in State corrections through the Civil Rights of Institutionalized Persons Act (P.L. 96-247), which authorizes the Attorney General to institute civil suits on behalf of prison inmates who are being deprived of their Federal constitutional or statutory rights. This statute also requires the Attorney General to develop minimum standards for inmate grievance procedures, and to establish a mechanism under which State and local governments may be certified, on a voluntary basis, for adopting the standards. A final rule on the standards pursuant to the Act was issued on Oct. 1, 1981 (Federal Register, v. 46, Oct. 1, 1981: 48181).

Recommendations of the Attorney General's Task Force On Violent Crime

Early in the Reagan Administration, Attorney General William French Smith appointed a Task Force on Violent Crime to recommend actions the Federal Government could take to combat violent crime. The Task Force report, issued Aug. 17, 1981, included several major recommendations concerning the future Federal role in prison reform.

The Task Force's most significant proposal called for a 4-year $2 billion Federal assistance program to finance the construction of State prisons. In justifying this proposal, the group concluded that States are in a "crisis" situation due to prison overcrowding and that Federal assistance is appropriate and necessary. Recognizing resource limitations, the Task Force stated that the assistance could be used to make the best use of available space rather than actually expanding prison capacity. It recommended that the program be confined to the construction and renovation of State prisons rather than including local jails because of the greater needs of the former. It proposed that the Federal share of the cost of the project be limited to 75%.

The Task Force also suggested other areas for Federal initiatives. As an immediate step, it urged the Federal Government to make abandoned military bases available to State and local governments to house prisoners on an emergency basis. For the long range, it proposed that the Federal Property and Administrative Services Act be amended to permit Federal surplus property to be conveyed or leased at no cost to State and local governments for corrections purposes, and that requests for such property be given priority.

The Task Force noted that as many as 70 Federal educational assistance programs are potential sources of funds for vocational and educational training in prisons but that eligibility under existing legislation is vague. It recommended that efforts to fund prison programs with these resources be enhanced, and that, when necessary, related statutes be amended specifically to establish eligibility for corrections programs.

The Task Force pointed to the possibility of the development of regional prisons to be operated by the Federal Government, and private sector involvement in corrections management as areas for further study.

Summary of Reagan Administration Policy Towards Prison Reform

The Reagan Administration has shown little interest in a Federal financial assistance program for state prison construction, apparently because of the high cost. As an alternative, the Administration advocates the transfer of Federal surplus property to States for use as correctional facilities, arguing that such facilities would be available immediately, and that the cost to the Government would be a fraction of the cost of new construction.

In 1981, the Justice Department announced the first such transfer of a Federal facility -- the Watertown Air Force Station -- leased to the State of New York for use as a 200-bed prison. Other transfers have followed: Opa Locka Coast Guard Station purchased by Florida in 1982; the purchase of Camp Atterbury Fish and Wildlife Area by Indiana in 1983; and the lease of McNeil Island to Washington State in 1984, to name a few.

Recently, legislation was signed authorizing the closing of a number of the Nation's military bases. Many of these may be candidates for conversion to correctional facilities.

In addition to the transfer of surplus property, the Administration plans to disseminate information to State and local governments on cost-efficient prison construction. In a speech before the National Law Enforcement Council in April 1985, Attorney General Meese stated that the Justice Department would "work with state and local governments to find ways in which we can build prisons at lower costs and, at the same time, provide architectural plans for them. We ought to be able to get the best state-of-the-art information on cost-effective prison construction." Also, the National Corrections Academy at Boulder, Colorado, under the auspices of the NIC, trains State and local corrections personnel. The Bureau of Prisons is also sharing its training resources with State and local governments. The Anti-Drug Abuse Act of 1986 (P.L. 99-570) appropriated $5 million to the Bureau of Justice Assistance for a pilot prison capacity program. A related provision requires the Defense Department to conduct a study on the use, as prisons, of existing facilities under the jurisdiction of the Department. As a result, 7 D.C. minimum security facilities have recently been established on active military bases.

Congressional Initiatives and Options

Congress is faced with several broad options regarding prison reform. One is to appropriate funds similar to the $25 million construction assistance program authorized in P.L. 98-473. Supporters of this option point to the critical situation in U.S. prisons and to the fact that judges, in some cases, are not free to use imprisonment as a sentencing option to protect society from crime. They argue that Federal courts have mandated improvements, but that State and local governments cannot afford these changes without Federal aid. Opponents, including the Administration, object to the high costs of such assistance.

Another approach is to increase Federal assistance for program improvements and the development of alternatives to incarceration, not for capital improvements. Part of this rationale may be economical -- compared to capital improvements, program support requires less funding. Also, proponents of rehabilitation programs point to a number of successes which indicate that well-designed and well-administered programs do lead to reduced recidivism rates. Opponents of capital improvement assistance also consider the difficulty of distributing aid for capital improvements equitably since States with poor prison conditions could be rewarded while States that have attempted improvements could be penalized.

Perhaps the most innovative option facing Congress is the increased use of prisons constructed and/or administered by private corporations. It is reported that approximately 25 correctional facilities (not including community correctional facilities) are currently being administered by private firms. The primary contractors in this burgeoning field include the Corrections Corporation of America, Inc. (Nashville, TN), RCA Service Co., (a subsidiary of the RCA Corporation), and Behavioral Systems, (Pomona, CA). Other firms, such as Justice Systems, Inc. of Atlanta, specialize in jail administration.

In their FY89 budget, the Federal prison system requested leasing authority for three medium security Federal correctional institutions. These facilities would be constructed with private resources, leased on an annual basis, and staffed and managed by the Bureau of Prisons.

The use of private corporations to administer prisons raises several questions. First is the use of private corporations a more cost effective way of continuing past rehabilitation policies, or will education, training and treatment programs be reduced? Second, what is the liability of the contractor in the event of a riot, escape, or shooting of a prisoner? Finally, what types of oversight mechanisms are required to ensure that the government's needs are fully met?

At the end of the second session of the 99th Congress, the Anti-Drug Abuse Act of 1986 (P.L. 99-570) was enacted. Among the major provisions is a substantial increase in Federal funds for Federal prison construction. Federal funds would also be made available to States to fund prison construction projects under a new program of matching formula grants to the States (75/25) for State and local enforcement of drug control laws. As authorized in the legislation, $230 million was to be made available through the Bureau of Justice Assistance for each of the next 3 years. In FY87 $223 million was appropriated. States may use their allocated funds for prison construction. While the correctional institutions constructed with grant funds do not have to be used exclusively for drug offenders, the costs would have to be prorated according to the relative number of drug offenders and other offenders. In both FY88 and FY89, $70 million was appropriated for State and local drug law enforcement. In addition to the $70 million appropriation, the 1988 Drug Abuse Act provided $80 million to this program for FY89. The Administration's FY1990 budget requests $105 million for State and local drug law enforcement.

The FY88 continuing resolution contained language which intended that as much surplus as possible from the Justice Department's assets forfeiture fund be transferred to the Federal prison system to construct detention facilities. In October 1988, the Attorney General announced that the transfer of $95.4 million will be available from this source. The Anti-Drug Abuse Act of 1988 provided an additional $96.6 billion for Federal prison construction.

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Corrections experts and officials expect the remainder of the 1980s to witness the biggest prison population explosion in U.S. history, far outstripping our ability to build the increasingly expensive prisons needed to keep pace. Why? Public policy decisions—more than crime or demographic factors—are behind the prison overcrowding crisis. As fast as new prisons are built, they are filled beyond capacity. How big is the problem? And why are hard-pressed states now beginning to explore alternative punishments to imprisonment?

America is now in the second decade of an unprecedented prison population explosion. According to the Bureau of Justice Statistics (BJS), the Justice Department's research arm, the number of inmates has risen more than 150 percent since 1974—from 200,000 to over 500,000 today.

- The BJS annual survey published in June 1986 found a net increase of 8.4 percent—39,034 prisoners in state and federal hands—between 1984 and 1985 alone.
- As of December 31, 1985, there were 503,601 inmates in state and federal prisons.
- From 1980 to 1984, as reported crime decreased nationally, the incarceration rate rose by 36 percent.
- In fact, the United States now locks up a greater proportion of its citizens—201 out of 100,000 as of 1985—than any other industrial democracy.

A 1985 BJS special report estimated that at least 2 percent of all white males in the U.S., and 10 to 15 percent of all black males, are likely to serve a prison sentence some time in their lives.

The same report suggested that "with further projected increases for the remainder of the decade . . . the imprisonment rate increase of the 1980s may turn out to be the biggest ever."

The "baby boom bulge"—the coming of age of the massive post-World War II generation—and increasing crime helped start the prison population surge in the 1970s. But other factors account for the current sustained growth in imprisonment. The baby boom generation has now passed its peak "at risk" years for incarceration. The national crime rate dropped more than 15 percent between 1980 and 1984, while the incarceration rate climbed precipitously. In 1985 the crime rate increased by about 3.5 percent and preliminary statistics suggest that it went up again during 1986—and the rate of incarceration continued to go up during this two-year period as well. All this supports what many criminologists believe—that demographics and the crime rate have little direct influence on our current increased imprisonment trend.

In 1983 testimony before Congress, Allen Breed, then the director of the Justice Department's National Institute of Corrections, observed that "jail and prison populations must be seen as less the result of such quantifiable indicators as the baby boom and the crime rate than as the result of basic policy decisions about how we choose to deal with offenders."

The size of prison populations, in other words, is determined primarily by public policy—by how much or how little discretion is exercised by police officers, prosecutors, judges and legislators and by how they employ that discretion. Decisions to change criminal justice policy frequently involve reallocating discretionary power from one set of actors in this system to another. Legislators, judges and parole boards, for example, compete with one another for the primary authority to fix the length of prisoners' sentences.

This competition for political power has been shaped by—and has helped shape—an increasingly punitive public attitude toward crime and corrections. The authority to determine sentencing policy has, in many states, become synonymous with the authority to lengthen sentences and increase prison commitments. More and more offenders are being sent to prison for increasingly long and inflexible sentences. Nevertheless, public opinion polls consistently indicate that fear of crime has not diminished; increased reliance on imprisonment, it seems, has little bearing on how safe people feel on the streets or in their homes.

But the increasing demand for prison space has had another, unwelcome effect: it has forced state governments—many of them severely strapped for revenue—into an expensive and ultimately futile game of catch-up.

- A 1985 survey by the National Conference of State Legislatures found that corrections is the fastest growing element of state spending in the U.S. Between 1979 and 1983, state spending for corrections soared by 45.5 percent after inflation—almost three times faster than total state spending grew. By contrast, education expenditures by the states increased only 5 percent after inflation during the same period.
- The same legislative survey found that in 1984, more than 56,000 new state prison beds were under construction—at a cost of $2.1 billion—and construction of another 49,000 prison beds was planned through 1989. But the experience of the recent past suggests that new prison construction will not do what it's intended to do—relieve current overcrowding and meet future needs.
- A 1984 BJS bulletin reported that state prisons throughout the United States had been roughly 110 percent of capacity in 1978. By 1983, state prisons were still at 110 percent of capacity—despite the addition of more than 120,000 prison beds in the space of five years.

A five-volume report commissioned by Congress and published in 1980 suggests that prisons are, in the jargon of the field, "capacity driven"—that is, the greater the capacity of the prison system, the greater the rate at which people are sent to it. The study—which was conducted by Abt Associates, a social science research firm based in Cambridge, Massachusetts—found that, on average, new prisons had 30 percent more inmates than they were designed to handle within five years of being opened.

Little wonder, then, that in prisons throughout the nation, overcrowding has become the normal condition. Overcrowding has led to the semi-permanent housing of inmates in trailers, tents and other "temporary" quarters. It has meant the long-term confinement of two and sometimes three prisoners in cells designed to accommodate one. It has turned prison gymnasiums into dormitories and filled dormitories almost to their ceilings with inmate bunk beds.

Overcrowded prisons are not immediately alarming to a public fed up with crime and with criminals. Prisons should not be too comfortable, many people declare, and prisoners should not be too pampered. Corrections professionals, however, all agree that overcrowding is both degrading and dangerous. Overcrowding overtaxes prison infirmaries, dining halls, counseling services and educational and vocational programs. Overcrowding overworks and often overwhelms a prison staff. Overcrowding produces inmate idleness and exacerbates inmate tensions; it is tinder for violence among inmates and against corrections officers. Overcrowding is typically an underlying cause of prison hostage-taking episodes and inmate riots.

Prison overcrowding is also manifestly illegal. Since the late 1960s, federal courts throughout the country have consistently found that overcrowding violates the Eighth Amendment's prohibition against "cruel and unusual punishment." State courts also have found overcrowding to be illegal. By February 1986, the overcrowding litigation scorecard read:

- Eight states and the District of Columbia were under federal court order or consent decree to reduce overcrowded conditions throughout their entire prison systems.
- In another 26 states, court orders and consent decrees governed the operation of at least one prison.
- In fact, in only eight states has prison overcrowding not been the subject of major federal civil rights litigation.

(An excellent source of information about overcrowding litigation throughout the nation is the **National Prison Project** in Washington, D.C. The telephone number of the project is (202) 331-0500.)

The combined pressures of spiraling construction costs and federal litigation have prompted policymakers in a number of states to take steps to reduce prison overcrowding by means other than new prison construction. These have included early inmate release mechanisms, legislatively imposed caps on inmate populations and, increasingly, the development of alternatives to incarceration, such as restitution centers, community service sentencing and intensive probation.

(The **Center for Effective Public Policy**, a nonprofit consulting firm funded jointly by the National Institute of Corrections and the Edna McConnell Clark Foundation, undertakes comprehensive criminal justice planning and assists state and local decision makers in developing policies designed to relieve overcrowding. The center is based in Philadelphia; its telephone number is (215) 569-0347.)

Such alternative measures to reduce prison overcrowding have become especially popular in the South, the region of the nation with the highest rate of incarceration. "There is no doubt that there have been more changes in the South than have occurred in any other region," Morris Thigpen, Mississippi's commissioner of corrections and the president of the Association of State Correctional Administrators, said recently. "We're beginning to realize that none of our states can afford to build new prisons."

The political response to an increasing crime rate is to "get tough." Lacking creative solutions to preventing societal problems such as drug abuse, states rigidify their sentencing practices in essentially four ways: determinate sentencing, mandatory sentencing, lengthened sentences and a sharp reduction in parole releases. What is gained–or lost–through these strategies? How much consideration is given to the costs involved?

DETERMINATE SENTENCING

*In*determinate sentencing is still the rule in 35 out of 50 states. It allows the judge to impose a minimum/maximum sentence–five to 15 years, for example–but leaves the actual term served up to the state paroling authority.

After some portion of the sentence has elapsed (a third of the minimum in many states), the inmate becomes eligible for parole. The paroling authority bases its decision largely on the offenses committed, past criminal record, and conduct in prison. Release is conditional; re-arrest on new charges or failure to comply with the terms of release (such as staying employed or refraining from alcohol or drug use) during the term of parole can lead to the revocation of parole and a return to prison.

By the mid-1970s, indeterminate sentencing was under increasing attack from criminal justice officials and scholars. Studies showed that parole release decisions amounted to little more than second-guessing the judge. Release decisions themselves were frequently criticized as arbitrary, unjust and hastily reached. Inmates sentenced for similiar crimes, and with similar prior records, often served very different prison terms. One response was to develop parole guidelines aimed at making sentences more uniform. Another was determinate sentencing.

With determinate sentencing, the court sets a fixed sentence within the limits prescribed by law, and the possibility of early parole release is eliminated. Determinate sentencing takes a variety of forms, including:

- **Presumptive sentencing.** A specific presumed sentence is set by law for each category of crime. Although in theory that sentence may be reduced or increased depending on mitigating or aggravating circumstances, the judge's discretion is sharply limited by a requirement that the reason for a nonpresumptive sentence be given in a written order. California adopted presumptive sentencing in 1979.
- **Determinate-discretionary sentencing.** A sentence range is established by law for each set of crimes, and sentences must fall within this range. Illinois adopted determinate-discretionary sentencing in 1979.
- **Sentencing guidelines.** A range of sentences is developed by a legislatively established commission. The sentences are based both on the crime committed and on the previous criminal history of the offender. The court must justify any deviation from the established guidelines in writing. Minnesota adopted a sentencing guidelines system in 1978.

In all, 15 states have gone to some form of determinate sentencing since 1976, according to a 1985 survey by the National Conference of State Legislatures.

Determinate sentencing is controversial because it limits judicial discretion in sentencing. But determinate sentencing does not necessarily lead to longer sentences or to prison overcrowding. In Minnesota, for example, sentencing guidelines were credited with stabilizing the state prison population during the early 1980s. This was because of two factors. The state's sentencing commission established guidelines designed to reserve prison space for serious violent offenders—even first-time offenders—at the expense of repeat nonviolent offenders. And the commission explicitly took the state's existing prison capacity into account in drawing up its guidelines.

Many state legislatures, however, have been unable to resist the temptation to "get tough" on crime by using the switch to determinate sentencing to lengthen prison terms. In Indiana, for example, before determinate sentencing was established in 1977, the average time served for prison-sentenced burglary offenders was about 1.8 years. The legislature increased the determinate sentence for burglary to four years.

The abolition of parole also eliminated a valuable safety valve for relieving prison overcrowding in many states.

MANDATORY SENTENCING

Mandatory sentencing is a form of determinate sentencing—the most extreme form. It also embodies the "get tough" mood of many state legislatures.

In mandatory sentencing, a court sets a minimum prison term from a sentence range established by law. The court cannot adjust the sentence length or impose any alternative sentence; there is no possibility of parole or other early release.

Mandatory sentencing laws exist in states with both indeterminate and determinate sentencing systems. A 1982 report from the federal Bureau of Justice Statistics found that 37 states had enacted some form of mandatory sentencing during the immediately preceding years. It included mandatory prison terms for repeat—or "habitual"—offenders, for illegal drug sale or possession, for crimes committed with firearms, and others.

Mandatory sentencing has frequently backfired as a "get tough" crime-fighting weapon. New York's so-called Rockefeller drug laws, for example, require a mandatory minimum prison sentence of 15 years for possession or sale of as little as two ounces of cocaine or heroin. The law permits plea bargaining, however, for those willing to cooperate with police in naming other drug dealers. The result is that the offenders who frequently get "Rockefellered" are small-timers who don't belong to a drug-dealing network and can't "name names" for the police. And the law also creates court congestion. The threat of harsher penalties results in more trials; in New York, the average length of time between arrest and disposition in drug cases quickly doubled after the Rockefeller laws were enacted.

Mandatory sentencing also exacerbates overcrowding.

- In California, a mandatory prison term of four years was established for all second-degree burglary offenders in 1983. State officials say the law is increasing California's already burgeoning prison population at a rate of some 2,500 inmates per year.
- About 8 percent of New York's prison population—about 2,800 inmates—are currently serving time under the Rockefeller drug laws.
- In Alabama, a 1982 habitual offender statute set a mandatory prison term of 30 years for second-time burglary offenders.

LENGTHENED SENTENCES

Each year, literally thousands of bills are introduced in the nation's state legislatures with the intention of increasing prison terms for specific crimes. The debate on these bills rarely addresses their impact on prison populations. But that impact can be enormous.

- A package of bills dramatically lengthening presumptive sentences passed during the final hours of the 1985 session of the Colorado State Legislature. State officials now say that the increased penalties in the law will double the state's prison population within five to seven years.
- A 1983 Ohio sentencing law set lengthened minimum sentences for what it defined as "aggravated felonies"—those involving a threshold level of violence or committed by offenders with prior felony convictions. These enhancements, combined with an add-on of three years for all felonies committed with firearms, are expected to give Ohio a prison population of 28,000 by 1995—when its prison capacity is expected to be 21,000.

To discourage that kind of excess, South Carolina legislators now maintain a state prison overcrowding project that is required to make a prison population impact statement—similar in concept to an environmental impact statement—for all enhancement bills that are introduced.

PAROLE: THE BIG CHILL

Parole boards throughout the country have responded to the "get tough" spirit of the times with sharp reductions in the parole release of offenders. These cutbacks have contributed significantly to prison overcrowding. No national studies have been done on this phenomenon. But statistics from a few states illustrate the trend:

- In Ohio, parole was granted in only 39.3 percent of all cases reviewed during 1985, down from 61.6 percent in 1980. During the same period, the proportion of offenders committed to Ohio prisons for violent offenses varied only slightly—from 34 percent in 1980, down to 28 percent in 1983 and back to 33 percent in 1985. A more conservative mood has contributed significantly to this drop-off in parole releases, Ohio corrections officials acknowledge.
- In Nevada, studies done for the state legislature show that between 1979 and 1983, there was little change in the types of offenses that resulted in prison commitments in that state, or in the prior arrest and conviction records of offenders admitted to prison. Nevertheless, the proportion of paroles granted at the earliest eligibility declined from 60 percent in 1979 to 24.5 percent in 1983. James Austin of the National Council on Crime and Delinquency, who compiled these statistics, believes that a more punitive attitude toward parole explains this decline.
- In New York, parole release on first eligibility declined from 72 percent in 1972 to 32 percent in 1982. Much of that decline occurred because of a change in the law that gave judges, not the parole board, the authority to fix the parole eligibility date. It was a change that reflected the "get tough" sentencing mood, because judges have an interest in seeing that the sentences they impose are "real," and not shortened by early parole release.

[redacted]

Imprisonment is the fastest growing item in most state budgets. In fact, the cost of imprisonment is much higher than usually acknowledged. Construction bond issues with ultimate price tags in the billions are the most visible indicator. But the cost of actually operating new prisons is often ignored in public discussions. So are the harder-to-gauge but undeniable costs paid by states forced to forgo effective crime prevention measures as prisons take an ever-greater share of scarce public resources.

Prisons are expensive to build and operate and are becoming more expensive all the time.

A survey published in April 1986 by *Corrections Compendium*, a professional newsletter put out by Contact Center, Inc., in Lincoln, Nebraska, (402) 464-0602, found that, on average, the cost of building a maximum-security prison in the U.S. was currently running at more than $98,000 per bed. That figure is so high because prisons are, in reality, miniature, self-contained communities of concrete and steel; the per-bed cost includes the expense of building prison kitchens, infirmaries, industrial areas, administrative offices and more.

Reported prison operating costs vary widely from state to state, from $7,000 to $30,000 per inmate per year. Even using an annual cost at the low end of this range, it's easy to see why prison operation is a fast growing item in state expenditures throughout the country.

But as dramatic as these figures are, they only begin to tell the story. There are hidden and long-term costs to imprisonment, and when those costs are accounted for, the price tag on prisons climbs even higher.

This is not intended to suggest that state officials deliberately conceal the true costs of prisons. But traditional methods of reporting prison costs routinely ignore attendant outlays essential to prison construction and operation.

HIDDEN AND LONG-TERM CONSTRUCTION COSTS

Finance charges: People who buy homes with long-term bank loans expect to pay out two or three times the purchase price of their new houses before their bank notes are retired. The same thing happens when states "buy" prisons, and the finance charges can be enormous.

As they do for most major construction undertakings, states typically pay for new prisons by issuing long-term—often 20- to 30-year—bonds.

The state of New York, for example, has authorized the sale of $513 million in state bonds to help pay for a 10,200-bed prison expansion program. The **Correctional Association of New York**, (212) 254-5700, a citizens' oversight organization, has estimated that the actual cost to the state's taxpayers of this bond sale will reach $1.3 billion to $1.36 billion by the time the bonds are retired in the second decade of the 21st century.

Uncounted costs: The **Institute for Economic and Policy Studies** in Alexandria, Virginia, (703) 549-7686, has reported that prison construction budgets frequently leave out such essential items as: the costs of site acquisition and preparation, including the costs of running utility lines to the prison site; architects' fees; equipment costs; and insurance for the construction site. In 1981, the institute was asked by the state of Connecticut to analyze the $50,000-per-bed estimated construction cost of a proposed new prison there. When the "incidental" uncounted costs were figured in, the price tag on the proposed prison climbed by almost 25 percent, to $62,000 per bed.

Cost overruns and inflation: Cost overruns plague prison construction projects as much as they do other public works projects. In 1983, a 15-state survey by the Commission on Accreditation for Corrections, (301) 770-3097, found, for example, that cost overruns on prison construction had occurred in eight of those states and averaged more than 39 percent of the original budget. In other states, the commission found, planned construction was scaled down while building was under way in order to prevent overruns.

Even a relatively low rate of inflation can add millions of dollars to the eventual cost of a prison's construction.

HIDDEN AND LONG-TERM OPERATING COSTS

Special services: Many times, the special services provided to prisons in the areas of mental health, medical care or legal assistance to inmates are not included in published prison operating budgets. A budget analysis by the Correctional Association of New York, for example, found that the proposed state prison system budget for fiscal 1986-87 of $756 million would be increased by another $29 million if the cost of such special services were included.

Employee benefits: The same analysis by the Correctional Association reports that fringe benefits and pension payments for prison system employees are lumped together with similar payments for other state employees in a "miscellaneous" state budget. The Correctional Association estimates that including such payments in the state prison budget would increase that budget by more than $193 million.

In other words, when special services and fringe benefits are counted, the New York State prison budget for fiscal 1986-87 increases by almost $223 million—or 29 percent.

Long-term costs: Prisons are built to be in operation for decades. Many of the largest and best-known prisons in the United States were built before World War II, some were built before the turn of the century. The current prison building boom will therefore have state budgetary ramifications well into the next century.

In testimony to Congress in 1983, Allen Breed, then the director of the National Institute of Corrections, framed the issue this way: "When a legislature decides to spend, say, $100 million on new prison construction, it is committing the taxpayers of that state to $1.6 billion in correctional expenditures over the ensuing three decades. Construction is only 6 percent of the charge to taxpayers over 30 years. For every dollar in construction, there will be $16 in operating costs. The construction is only the down payment."

HIDDEN AND LONG-TERM SOCIAL COSTS

Opportunity costs: Economics textbooks teach readers about "opportunity costs"—the income lost, for example, by keeping money in a non-interest-bearing checking account instead of investing it. Because prison construction and operation soak up so large a portion of state government expenditures—with so little apparent return in controlling or preventing crime—they represent societal opportunity costs.

Illinois Governor James Thompson stated this reality clearly in a 1983 newspaper interview. "A dollar for corrections," he said, "is a dollar that doesn't go someplace else." Corrections construction takes money away from the construction of bridges, roads or sewers; corrections operations divert money from law enforcement, health care, job training and education.

There is ample evidence of these opportunity costs. Between 1979 and 1984, for example, the budget for the New York City Police Department grew by only 5 percent, adjusted for inflation. During the same period, the budget for the city corrections department grew by 51.5 percent. A survey by the National Conference of State Legislatures found that between 1979 and 1983, state corrections spending throughout the nation, adjusted for inflation, grew by almost 45.5 percent, almost three times faster than total state spending. During the same period, state spending on education grew by only 5 percent after inflation—this during a period when one national commission after another declared American education to be in a state of crisis.

Public assistance costs: A North Carolina citizens' group estimated in 1979 that the state spent $18 million on public assistance for the dependents of state prison inmates. Some of that money would probably have been paid out anyway, because the offenders' families would have been on public assistance whether or not the offender was in prison. But the additional public assistance costs borne by the states because of imprisonment, while undetermined at this time, are substantial.

[redacted]

The public wants a prison to be, at minimum or at most, a place where dangerous people are locked up for society's protection. But do most inmates land in prison for violent crimes? Are most inmates "career criminals" who pose a long-term threat? Has locking more people up for longer sentences made America safer? Some statistics are more useful than others; some studies may be misleading. Take a closer look at who goes to prison and why. Are prisons really doing what the public wants them to do?

THE PATH TO PRISON

Crimes are divided broadly into two legal categories: misdemeanors (less serious) and felonies (more serious). In most states—but not all—prison is reserved for convicted felons; the minimum prison sentence for felony offenses is generally one year. In most cases, misdemeanants can be sentenced to county jail time of up to one year.

(There are exceptions to this rule. In South Carolina, for example, misdemeanants sentenced to more than 90 days' confinement are sent to state prison. Rhode Island has a unified prison and jail system.)

For analytical purposes, felony offenses fall into three widely agreed upon criminological categories: violent crimes, including murder, rape, robbery and assault; property crimes, including burglary, auto theft, larceny and forgery; and public order crimes, including illegal gambling, possession of or trafficking in drugs and promoting prostitution or pornography.

Offenders convicted of violent offenses are more likely than those convicted of property or public order offenses to be sentenced to prison. A 1984 report by the federal Bureau of Justice Statistics found, for example, that 67.7 percent of those convicted of serious violent felonies in New York State were sentenced to prison, compared with 36.2 percent of those convicted of property crimes and 38.9 percent of those convicted of drug offenses. Similar proportions were reported in other states.

Nevertheless, recent national statistics show that the majority of offenders admitted to prison each year are there for property or public order offenses, not violent crimes. Data compiled by the BJS show that in 1979, approximately 47 percent of admissions to prisons were for violent crimes, 33 percent were for property crimes and 20 percent were for public order offenses.

These figures testify to the large volume of property and public order offenses processed by the criminal justice system; they also reflect the pervasiveness of plea bargaining. Most prison admissions result from plea-bargained convictions, and some arrests for violent crimes, such as robbery, may end as convictions for property or public order offenses, such as possession of stolen property or possession of drugs. On the other hand, arrest charges are not perfectly accurate either; studies show that police officers frequently "overcharge" at arrest on the presumption that the case will ultimately be plea bargained to a lesser charge.

THE CRIMINAL CAREERS OF PRISON INMATES

Most prison inmates have long histories of arrest, many times beginning in their juvenile years. Does this fact justify the current rate of incarceration in the U.S.? Criminal justice researchers disagree.

In 1979, the Bureau of Justice Statistics interviewed a random sample of the nation's prison inmates about their criminal histories. Citing these interviews, Justice Department officials have made several statements in recent months suggesting that virtually all of the nation's inmates are violent or habitual criminals in need of imprisonment.

In a letter to *The New York Times* published October 12, 1985, BJS director Steven Schlesinger and Lawrence Greenfield, director of the BJS corrections statistics program, wrote that these data:

> indicate that about two-thirds of the state prisoners have been convicted of violent crimes (on either their current or prior offense). Fully 95 percent of all state prisoners are either violent offenders or recidivists. . . There is no avoiding the conclusion that there is in this country a substantial number of violent or repeat offenders who must be removed from society for some period of time. . . .

Citing the same statistics, which have never been published by BJS, Lois Haight Herrington, a former assistant attorney general in the Justice Department, wrote in an opinion piece published by *The Washington Post* on February 15, 1986, "If the goal of our justice system is to protect the innocent, perhaps we should be asking ourselves whether the number of serious felons in prisons is too small, rather than too great."

But other researchers, such as James Austin, research director of the **National Council on Crime and Delinquency** (NCCD), question that conclusion. Austin contends that the BJS interview data are vague, skewed and out-of-date in several important respects:

- They use a loose definition of violent crime—including purse snatching and burglary—which is not commonly accepted.

- They employ a very broad and possibly misleading definition of recidivism. Recidivism means repeat criminal behavior, variously measured by prior arrests, convictions or periods of incarceration. The only question the BJS interviewers asked about recidivism was: "Have you ever done time before?" A "yes" response could refer to prison sentences for felonies, jail terms for misdemeanors or sentences to youth facilities for criminal or noncriminal offenses, such as running away from home. "Yes" to that question could also refer to time spent in jail awaiting trial—a misleading answer if recidivism is understood to mean repeated criminal convictions. It could also mean serving time for minor traffic offenses instead of paying a fine.

- The BJS figures are based on a snapshot survey of the prison population on a given day, which skews the results toward violent, long-term offenders in the same way that a one-day snapshot of a hospital population would be skewed toward seriously ill, long-term patients. Neither snapshot is an accurate picture of the kinds of patients admitted to a hospital nor the kinds of offenders admitted to prisons.

- Tough new sentencing laws passed since 1979 in many states have substantially increased the number of first-time and nonviolent offenders sent to prison. Austin said that recent NCCD surveys of prison populations in Florida, California and Nevada have found that in each state, more than two-thirds had never served a prior prison term.

(See the section on "'Get Tough' Sentences" for further details. James Austin can be reached at the NCCD offices in San Francisco, (415) 956-5651.)

PRISON AND THE CRIME RATE

According to the FBI's annual *Uniform Crime Reports*, the rate of reported serious crime in the U.S. declined by more than 15 percent between 1980 and 1984. The crime rate increased by about 3.5 percent during 1985 and preliminary indications suggest another small increase for 1986. The nation's imprisonment rate has increased every one of those years—in fact, it has been climbing steadily since 1974.

Is there any relationship between the crime rate and the incarceration rate? Do increases in imprisonment deter prospective criminal acts or reduce the threat of crime by incapacitating—taking out of circulation—dangerous repeat offenders?

These have been major topics of criminal justice research for some time. A 1978 report, published by the National Academy of Sciences, found that criminal sanctions, including imprisonment, appear to have deterrent and incapacitative effects. But the report also concluded that the scientific evidence of these effects was sketchy and inconclusive.

Many criminologists believe that prison has only a small effect in reducing crime, either through deterrence or incapacitation. Criminologist Elliot Currie summed up this point of view in his 1985 book, *Confronting Crime: An American Challenge*:

> It is likely that the huge increases in imprisonment since the early 1970s have kept the crime rate slightly lower than it would otherwise have been. But the experience of the past decade leads to the inescapable conclusion that the impact is small, relative to the investment it requires, and that although imprisonment is all too often an unavoidable necessity, it is not an effective way to prevent crime.

Currie and others believe that imprisonment is ineffective for controlling crime because crime is so pervasive. Interviews done by the U.S. Census Bureau suggest that only about half of all crimes committed in this country are even reported to the police. (The FBI's *Uniform Crime Reports* are based on crimes reported to the police.) The census data, which are published periodically as the *National Crime Survey*, report, for example, that police are notified of only about one-fourth of all residential burglaries. Even spectacular increases in imprisonment can therefore make only a small dent in crime, as a September 23, 1985, editorial in *The New York Times* concluded:

> It's unlikely . . . that the rising prison population has more than a slight effect on crime rates, whether by getting criminals off the streets or deterring others. Changing demographics and public attitudes surely have more to do with [the reported decreases in crime during the early 1980s], which still leaves America with a whopping crime rate.

The "changing demographics" referred to in the *Times* editorial is the "aging out" of the post-World War II baby boom generation past its youthful, high crime rate years. But a note of caution should be sounded here. As Charles Silberman observed in his 1978 book, *Criminal Violence, Criminal Justice*:

> Among the groups most heavily involved in street crime, the demographic trends are less favorable than they are in the population as a whole. Although the birth rate has been declining in every segment of American society, it nonetheless is considerably higher among the poor than the non-poor . . . In 1976, only 24.1 percent of American males were below the age of fourteen. Among the population officially classified as poor, on the other hand, 39.7 percent were under fourteen years of age; and among poor black males, no fewer than 48.3 percent were in that age group.

In October 1982 the Rand Corporation published *Selective Incapacitation*, a sentencing proposal aimed at identifying the most dangerous career criminals (or "violent predators," as Rand researchers called them) and prescribing lengthened, incapacitative sentences for them. The Rand report was based on an interview survey of some 2,100 prison and jail inmates in Michigan, Texas and California, and on a review of the criminal records of just the prison inmates. Proponents of this selective incapacitation model have claimed that it would reduce crime and reduce prison overcrowding; once the violent predators were identified and incapacitated, the remaining majority of prison inmates could be given shorter sentences or released to alternative, community-based programs.

However, a follow-up study of their subsequent criminal histories by Rand researcher Steve Klein, published in 1986, found that only about 55 percent of those predicted in 1982 to be "high-risk" offenders had indeed been reimprisoned. Barbara Williams, director of Rand's criminal justice program, said the new data indicate that neither the original selective incapacitation model nor any other known predictive system yet devised "works well enough to be confident about giving someone an eight-year sentence instead of a two-year sentence." Significantly, Peter Greenwood, the Rand researcher responsible for the original study, has repudiated his original contention that selective incapacitation can control crime.

U.S. Department of Justice
Bureau of Justice Statistics

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Bureau of Justice Statistics
Bulletin

Prisoners in 1987

The number of prisoners under the jurisdiction of Federal and State correctional authorities at yearend 1987 reached a record 581,609. The States and the District of Columbia added 32,584 prisoners; the Federal system, 3,892. The increase for 1987 brings total growth in the prison population since 1980 to nearly 252,000 inmates—an increase of about 76% in the 7-year period (table 1).

The 1987 growth rate (6.7%) was less than the percentage increase recorded during 1986 (8.5%), and the number of new prisoners added during 1987, 36,476, was about 6,000 less than the number added during the preceding year (42,626). Prisoners with sentences of more than 1 year (referred to as "sentenced prisoners") accounted for nearly 96% of the total prison population at the end of 1987, growing by 6.7% during the year (table 2). The remaining prisoners had sentences of a year or less or were unsentenced (those, for example, awaiting trial in States with combined prison-jail systems).

Table 1. Change in the State and Federal prison populations, 1980-87

Year	Number of inmates	Annual percent change	Total percent change since 1980
1980	329,821		
1981	369,930	12.2%	12.2%
1982	413,806	11.9	25.5
1983	437,248	5.7	32.6
1984	464,567	6.2	40.9
1985	502,507	8.2	52.4
1986	545,133	8.5	65.3
1987	581,609	6.7	76.3

Note: All counts are for December 31 of each year and may differ from previously reported numbers because of revision.

The number of sentenced Federal prisoners continued to grow at a faster rate than sentenced prisoners in the States during the year (8.2% vs. 6.5%). Among the 8,777 Federal prisoners with no sentences or sentences of 1 year or less were 2,384 under the jurisdiction of the Immigration and Naturalization Service, an increase of 26 over the number held at the end of 1986 (2,358). Nearly 77% of the total Federal increase occurred among those with sentences greater than 1 year; however, those with sentences less than 1 year or who were unsentenced grew by 11.4%, compared to 8.2% growth for sentenced prisoners during the year.

In four States total prison populations decreased during 1987; however, in two of these States the decreases were small (a total of 50 inmates). The number of prisoners in Washington continued to decline for the second year in a row, and North Carolina reported a 2.5% decline after an increase in 1986.

Total prison populations rose most rapidly during 1987 in Colorado (26.4%), Arizona (16%), Arkansas (15.8%), Michigan (15.1%), and Oregon (14.9%). Twelve States reported total prisoner increases of 10% or more, compared to the end of 1986. California's increase of nearly 7,500 additional prisoners was the largest single gain among the reporting jurisdictions and accounted for nearly 21% of the increase in the Nation (at the end of 1986, 10.9% of all prisoners in the Nation were in California). During 1987 Michigan's prison population continued a period of rapid expansion—the annual increase in 1984 was less than 1%, compared to annual increases of 21.8% in 1985, 16.8% in 1986, and 15.1% in 1987.

April 1988

This bulletin presents population counts for the Nation's prisons on December 31, 1987. The number of prisoners increased by more than 34,000 during the year, well below the record increases of 43,000 in 1982 and 1986. The number of prisoners present at yearend, however, again set a new record for the 13th consecutive time.

During the next several months, BJS will be releasing a compilation of historical prisoner counts for each State, the District of Columbia, and the Federal prison system covering each year since 1925. This collection will also be made available in machine-readable format through the Criminal Justice Archive at the University of Michigan.

I want to offer my deepest appreciation to the departments of corrections in the 50 States and the District of Columbia and the Federal Prison System, who make it possible for BJS to continue to gather and report data on the Nation's prisoners.

Steven R. Schlesinger
Director

Rates of incarceration increase

On December 31, 1987, the number of sentenced prisoners per 100,000 residents was 228, also setting a new record. Twelve of the 19 jurisdictions equal to or greater than the rate for the Nation were located in the South, 4 in the West, 2 in the Midwest, and 1 in the Northeast.

Since 1980 the number of sentenced inmates per 100,000 residents has risen 64%, from 139 to 228. During this period, per capita incarceration rates have grown most rapidly in the West, increasing by 104%, compared to 94% in the Northeast, 70% in the Midwest, and 35% in the South.

Table 3. Prisoners under the jurisdiction of State and Federal correctional authorities, by region and State, yearend 1986 and 1987

	Total			Sentenced to more than 1 year			Incarceration rate 1987[a]
	Advance 1987	Final 1986	Percent change 1986-87	Advance 1987	Final 1986	Percent change 1986-87	
U.S. total	581,609	545,133	6.7%	557,256	522,485	6.7%	228
Federal	48,300	44,408	8.8	39,523	36,531	8.2	16
State	533,309	500,725	6.5	517,733	485,954	6.5	212
Northeast	88,803	82,304	7.9%	85,256	79,008	7.9%	169
Connecticut	7,511	6,905	8.8	4,637	4,326	7.2	144
Maine	1,328	1,316	.9	1,307	1,243	3.0	106
Massachusetts	6,238	5,636	10.7	6,238	5,636	10.7	106
New Hampshire	867	782	10.9	867	782	10.9	81
New Jersey	13,662	12,020	13.7	13,662	12,020	13.7	177
New York	40,842	38,449	6.2	40,842	38,449	6.2	229
Pennsylvania	16,267	15,201	7.0	16,248	15,165	7.1	136
Rhode Island	1,429	1,358	5.2	992	1,007	-1.5	100
Vermont	759	697	8.9	505	439	15.0	91
Midwest	111,095	102,964	7.9%	110,671	102,553	7.9%	185
Illinois	19,850	19,456	2.0	19,850	19,456	2.0	171
Indiana	10,827	10,175	6.4	10,634	9,963	6.7	192
Iowa	2,863	2,777	3.1	2,863	2,777	3.1	101
Kansas	5,881	5,345	10.0	5,881	5,345	10.0	237
Michigan	23,879	20,742	15.1	23,879	20,742	15.1	259
Minnesota	2,546	2,462	3.4	2,546	2,462	3.4	60
Missouri	11,357	10,309	10.2	11,357	10,309	10.2	222
Nebraska	2,086	1,953	6.8	1,963	1,863	5.4	123
North Dakota	430	421	2.1	380	361	5.3	57
Ohio	24,240	22,463	7.9	24,240	22,463	7.9	224
South Dakota	1,135	1,164	-2.5	1,096	1,133	-3.3	154
Wisconsin	6,001	5,697	5.3	5,993	5,678	5.4	124
South	221,502	214,630	3.2%	214,236	207,300	3.3%	204
Alabama	12,827	11,710	9.5	12,682	11,584	9.5	307
Arkansas	5,443	4,701	15.8	5,443	4,701	15.8	227
Delaware	2,931	2,823	3.8	2,120	1,946	8.9	327
District of Columbia[b]	7,448	6,618	12.5	5,585	4,787	16.7	901
Florida	32,445	32,237	.6	32,366	32,228	.4	265
Georgia	18,575	17,363	7.0	17,210	16,291	5.6	274
Kentucky	5,471	5,288	3.5	5,471	5,288	3.5	147
Louisiana	15,375	14,300	7.5	15,375	14,300	7.5	348
Maryland	13,467	13,326	1.1	12,912	12,559	2.8	282
Mississippi	6,831	6,747	1.2	6,669	6,561	1.6	254
North Carolina	17,249	17,690	-2.5	16,151	16,373	-1.4	250
Oklahoma	9,639	9,596	.4	9,639	9,596	.4	296
South Carolina	12,664	11,676	8.5	11,862	11,022	7.6	344
Tennessee	7,624	7,591	.4	7,624	7,591	.4	158
Texas	38,821	38,534	.7	38,821	38,534	.7	231
Virginia	13,321	12,930	3.0	12,931	12,545	3.1	217
West Virginia	1,461	1,482	-1.4	1,461	1,482	-1.4	77
West	111,719	100,777	10.9%	107,570	97,038	10.9%	314
Alaska	2,538	2,466	3.0	1,707	1,609	6.1	320
Arizona	10,948	9,434	16.0	10,550	9,030	16.8	307
California	66,975	59,484	12.6	64,012	57,725	12.3	231
Colorado	4,808	3,994	20.4	4,808	3,994	20.4	145
Hawaii	2,268	2,180	4.0	1,536	1,521	1.0	141
Idaho	1,482	1,448	2.3	1,482	1,448	2.3	149
Montana	1,187	1,111	6.8	1,187	1,111	6.8	147
Nevada	4,434	4,367	1.5	4,434	4,367	1.5	432
New Mexico	2,648	2,416	9.6	2,561	2,306	11.1	169
Oregon	5,482	4,770	14.9	5,482	4,770	14.9	200
Utah	1,888	1,845	2.3	1,872	1,814	3.2	111
Washington	6,131	5,725	7.1	6,131	5,725	7.1	134
Wyoming	940	855	9.9	940	855	9.9	195

Note: Prison admissions refer to the number of prisoners received from courts with sentences of more than 1 year. Selected offenses are murder, nonnegligent manslaughter, forcible rape, robbery, aggravated assault, and burglary. Adults are the resident population age 18 and over.

[a]Offense figures for Illinois for 1986 may not be comparable to previous years.
Sources: National Prisoner Statistics; Uniform Crime Reports; Bureau of the Census estimates of population.

Western States grow faster than other regions

During 1987 the growth in the sentenced prisoner population in Western States (10.9%) was higher than in the other regions of the Nation: the Midwest increased 7.9%, the Northeast 7.9%, and the South 3.3%. Since 1980 sentenced prison populations in Western States have more than doubled (up nearly 139%), compared to growth of 98% in the Northeast, 72% in the Midwest, and 58% in the South (table 3). Over the same period, the number of sentenced Federal prisoners grew by 81%.

Since 1980, 14 States have more than doubled the number of sentenced prisoners, and 1 State, Alaska, has experienced a threefold increase. Eight of these States are located in the West: Alaska (210%), California (179%), Hawaii (146%), Arizona (142%), Nevada (141%), Washington (139%), New Mexico (114%), and Utah (102%).

California's increase of more than 41,000 sentenced prisoners since 1980 accounts for 66% of the increase for the West and 19% of the increase among the States over the period. In 1980, 7.9% of the Nation's sentenced State prisoners were in California; in 1987, 12.5%. (For additional State comparisons see table 4.)

Female prisoner population growth outpaces males

Women inmates numbered 28,839, increasing at a faster rate during 1987 (8.2%) than males (6.6%) (table 5). The rate of incarceration for sentenced males (445 per 100,000 males in the resident population), however, was about 21 times higher than for sentenced females.

The female prison population has grown at a faster rate than the male population in each year since 1981. The higher growth rates for women over the 1981-87 period have raised the female percentage of the Nation's prison population from 4.2% in 1981 to 5% in 1987 (table 6).

In 1987, 16 States and the Federal system had more than 500 female inmates. Among these States, 5 had increases of at least 10% led by Arizona (25.3%), Missouri (19.2%), Alabama (18.8%), California (16.5%), and Michigan (16.2%). California's increase of 588 during the year accounted for more than one-quarter of the growth nationwide.

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Table 3. Percent change in sentenced prison population from 1980 to 1987, by region and State

	Percent increase					
Region	0-19%	20-39%	40-59%	60-79%	80-99%	100% or more
Northeast			Vermont 47.7	Rhode Island 63.4 Connecticut 62.6	New York 88.7 Maine 83.0 Massachusetts 93.0	Pennsylvania 100.3 New Jersey 145.5 New Hampshire 166.0
Midwest	Iowa 15.5	Minnesota 37.0	Nebraska 40.0 Wisconsin 50.3 Michigan 57.0	Indiana 69.3 Ohio 78.7	S. Dakota 80.0 Illinois 85.1 Missouri 98.3	N. Dakota 105.4 Kansas 135.6
South	Tennessee 8.6 N. Carolina 11.7 W. Virginia 16.2	Texas 29.0	Georgia 44.4 Virginia 50.7 Kentucky 53.5 S. Carolina 48.7	Florida 60.1 Maryland 67.0 Mississippi 75.0 Louisiana 73.0	Arkansas 87.0 Delaware 95.0 Alabama 97.9	Oklahoma 101.0 District of Columbia 105.4
West				Montana 66.8 Oregon 73.0 Wyoming 76.0	Colorado 94.3 Idaho 81.4	Utah 101.7 New Mexico 113.6 Washington 139.4 Nevada 141.1 Arizona 142.7 Hawaii 146.7 California 178.6 Alaska 209.5
Regional totals			South 50.2	Midwest 71.6	Northeast 97.5	West 130.8
U.S. summary				States 75.4 Total 76.5	Federal 91.0	

Note: Sentenced prisoners are those with sentences of more than 1 year.

Table 4. The prison situation among the States at yearend, 1987

10 States with the largest 1987 prison populations	Number of inmates	10 States with the highest incarceration rates, 1987*	Prisoners per 100,000 residents	10 States with the largest percent increases in prison population			
				1986-87	Percent increase	1980-87*	Percent increase
California	66,975	Nevada	432	Colorado	26.4%	Alaska	209.5%
New York	40,842	Louisiana	346	Arizona	16.0	California	178.6
Texas	38,821	South Carolina	344	Arkansas	15.8	New Hampshire	166.0
Florida	32,445	Alaska	339	Michigan	15.1	Hawaii	146.7
Ohio	24,360	Delaware	327	Oregon	14.9	New Jersey	145.5
Michigan	23,879	Alabama	307	New Jersey	13.7	Arizona	142.7
Illinois	19,850	Arizona	307	California	13.6	Nevada	141.1
Georgia	18,575	Oklahoma	305	New Hampshire	10.9	Washington	139.4
North Carolina	17,249	Maryland	302	Massachusetts	10.7	Kansas	135.6
Pennsylvania	16,307	Georgia	274	Missouri	10.3	New Mexico	113.6

Note: The District of Columbia as a wholly urban jurisdiction is excluded.
*Prisoners with sentences of more than 1 year.

Table 5. Prisoners under the jurisdiction of State and Federal correctional authorities, by sex, yearend 1986 and 1987

	Male	Female
Total		
Advance 1987	552,770	28,839
Final 1986	518,470	26,085
Percent change 1986-87	6.6%	9.7%
Sentenced to more than 1 year		
Advance 1987	536,569	26,887
Final 1986	497,081	24,993
Percent change 1986-87	6.6%	7.0%
Incarceration rate, 1987*	445	21

*The number of prisoners sentenced to more than 1 year per 100,000 residents of each sex on December 31, 1987.

Table 6. Women in State and Federal institutions at yearend, 1987

Jurisdiction	Number of women inmates	Percent of all inmates	Percent change in women inmate population, 1986-87
U.S. total	28,839	5.0%	9.7%
Federal	3,027	6.3	6.0
State	25,812	4.8	9.4
States with at least 500 women inmates			
California	4,153	6.2%	16.5%
Florida	1,881	5.2	3.8
Texas	1,555	4.0	10.9
New York	1,407	3.0	12.1
Ohio	1,295	5.3	8.0
Michigan	1,183	5.0	10.7
Georgia	925	5.0	-2.0
North Carolina	812	4.7	-3.2
Illinois	779	3.9	2.0
Alabama	732	5.7	10.9
Oklahoma	694	7.2	3.2
Pennsylvania	674	4.1	14.0
Louisiana	673	4.4	7.3
South Carolina	661	5.2	10.0
Arizona	609	5.0	25.3
Missouri	540	4.8	19.7

More than 12,000 in local jails because of State prison crowding

At the end of 1987, 16 States reported a total of 12,220 State prisoners held in local jails because of crowding in State facilities (table 7). This number changed little from the preceding year. Two States—Louisiana and New Jersey—accounted for half of the State-sentenced prisoners held locally. Five States—Kentucky, Louisiana, Mississippi, New Jersey, and Tennessee—held more than 12% of their State-sentenced prisoners in local jails because of State facility crowding. Overall, 2.3% of the State prison population was confined in local jails on December 31, 1987, because of prison crowding.

Estimating prison capacity

The extent of crowding in the Nation's prisons is difficult to determine precisely because of the absence of uniform measures for defining capacity. A wide variety of capacity measures are in use among the 52 reporting jurisdictions because capacity may reflect both available space to house inmates and the ability to staff and operate an institution. To estimate the capacity of the Nation's prisons, States were asked to supply up to three measures for yearend 1987—rated, operational, and design capacities. These measures were defined as follows:

- Rated capacity is the number of beds or inmates assigned by a rating official to institutions within the State.
- Operational capacity is the number of inmates that can be accommodated based on a facility's staff, existing programs, and services.
- Design capacity is the number of inmates that planners or architects intended for the facility.

Of the 52 reporting jurisdictions, 34 supplied rated capacities, 45 provided operational capacities, and 36 submitted design capacities (table 8). As a result, estimates of total capacity and measures of the relationship to population are based on the highest and lowest capacity figures provided. (Nineteen States reported one capacity measure or gave the same figure for each capacity measure they reported.)

Most jurisdictions are operating above reported capacity

Generally, prisons require reserve capacity in order to operate efficiently. Prison dormitories and cells need to be maintained and repaired periodically, special housing space is needed to accommodate protective custody and disciplinary cases, and space may be needed to cope with emergencies. At the end of 1987, six States reported they were operating below 95% of their highest capacity. Forty-two jurisdictions and the Federal Prison System reported operating at approximately 100% or more of their lowest capacity; 32 of these held populations that met or exceeded their highest reported capacities.

Overall, State prisons were estimated to be operating at approximately 105% of their highest reported capacities and at 120% of their lowest reported capacities (table 9). The Federal system was estimated to be operating between 37% and 73% above capacity.

Between 1986 and 1987, State and Federal prison capacities were estimated to have increased by approximately 30,000-38,000 beds (based on the lowest and highest capacities in table 9). At the end of 1987, estimated capacities were:

	Highest reported capacity	Lowest reported capacity
U.S. total	[illegible]	463,661
Federal	35,276	27,854
State	[illegible]	435,807

The net decline in Federal design capacity between 1986 and 1987 (84 beds) was attributed to disturbances that occurred at the Oakdale Detention Center (Louisiana) and the Atlanta Penitentiary (Georgia) that resulted in an aggregate loss of approximately 1,300 beds. Capacity expansion in other facilities during the year largely offset this loss, though the gains in prison population resulted in an increased imbalance between population and capacity compared to prior years. Approximately 6% of the available capacity nationwide at the end of 1987 was maintained by the Federal Government, while more than 8% of the Nation's inmates were subject to the jurisdiction of Federal prison authorities.

Table 7. Number of State prisoners held in local jails because of prison crowding, by State, yearend 1986 and 1987

States housing prisoners in local jails	Prisoners held in local jails: Number 1986	Number 1987	As percent of all prisoners 1986	As percent of all prisoners 1987
Total	13,025	12,220	2.4%	2.3%
Alabama	514	763	4.4	5.9
Arkansas[a]	650	50	8.9	.9
Colorado[a]	343	300	8.3	6.1
Idaho[a]	0	43	0	3.0
Illinois	40	0	.2	0
Kentucky[a]	884	955	14.4	15.0
Louisiana	3,100	3,784	23.2	24.6
Maine	30	23	2.7	1.7
Massachusetts[a]	103	142	1.8	2.3
Mississippi	1,109	874	17.3	12.6
New Jersey[b]	2,344	2,203	16.3	14.7
South Carolina	451	400	3.0	3.7
Tennessee[a]	1,201	1,610	13.7	17.4
Utah	77	103	4.2	5.5
Vermont[c]	8	10	1.1	1.3
Virginia	1,257	848	9.7	6.4
Washington	63	66	.9	.8

[a] For States not including jail backups in their jurisdiction counts, the percentage of jurisdiction population was calculated on the combined total of jail and prison.

[b] For 1986, 1,825 prisoners in local jails were added to the jurisdiction count. For 1987, 1,847 prisoners in local jails were added to the jurisdiction count.

[c] Vermont reported 8 inmates in local lockups in 1986 and 10 inmates in 1987 due to prison crowding.

Table 8. Reported Federal and State prison capacities at yearend, 1987

Jurisdiction	Rated capacity	Operational capacity	Design capacity	Population as a percentage of:[a] Highest capacity	Lowest capacity
Federal	27,654	35,270	27,654	137%	172%
Northeast					
Connecticut	6,072	6,088	5,781	104%	109%
Maine	984	1,227	984	105	140
Massachusetts	...	...	3,700	106	106
New Hampshire[b]	600	600	520	123	100
New Jersey	11,871	12,083	10,077	100	101
New York	...	41,063	28,440	99	112
Pennsylvania	...	...	13,647	131	131
Rhode Island	1,404	1,409	1,260	95	106
Vermont	607	607	547	127	130
Midwest					
Illinois	19,011	19,011	16,083	100%	127%
Indiana	9,803	...	...	110	110
Iowa	2,918	2,884	2,010	99	100
Kansas	5,766	5,766	...	106	104
Michigan	...	20,076	...	110	110
Minnesota	2,996	2,996	2,717	94	99
Missouri	...	11,267	...	100	100
Nebraska	1,463	1,313	1,042	134	138
North Dakota	...	404	404	97	97
Ohio	...	...	17,788	135	138
South Dakota	1,106	1,090	1,100	95	104
Wisconsin	4,880	4,880	...	120	139
South					
Alabama	11,107	11,107	11,107	100%	100%
Arkansas	...	5,400	...	101	101
Delaware	...	2,763	2,604	108	112
District of Columbia	7,022	7,341	...	101	108
Florida	30,383	33,140	25,700	99	126
Georgia	...	17,000	...	100	109
Kentucky	5,170	5,076	...	99	108
Louisiana	11,730	11,720	11,720	99	99
Maryland	...	12,074	10,000	97	123
Mississippi	6,275	...	...	93	98
North Carolina	16,094	16,000	...	98	103
Oklahoma	7,043	7,351	...	126	133
South Carolina	10,391	10,391	8,835	120	135
Tennessee	...	7,744	...	99	99
Texas[c]	46,000	38,481	40,440	94	99
Virginia	10,746	10,746	9,910	110	127
West Virginia[b]	1,047	1,060	1,047	95	99
West					
Alaska	...	2,224	...	107%	107%
Arizona	...	10,886	...	100	100
California	...	67,434	41,094	95	163
Colorado	4,607	...	3,040	109	141
Hawaii	1,070	...	1,070	136	120
Idaho	1,140	1,070	1,140	99	126
Montana	884	1,108	886	100	124
Nevada	...	4,121	3,080	107	126
New Mexico	2,450	3,000	2,440	99	108
Oregon	4,201	4,800	2,815	127	128
Utah	...	2,101	1,077	93	96
Washington	5,800	6,070	5,630	104	104
Wyoming	...	880	...	99	99

...Data not available.

[a] Excludes State-sentenced inmates held in local jails due to crowding where they have been included in the total prisoner count.

[b] Capacity figures available for males only. West Virginia reports an additional capacity to house 51 female prisoners.

[c] Excludes 896 inmates in pre-parole facilities.

Table 9. Population as a percentage of reported capacity for State and Federal prisons, 1985-87

	Population as a percent of:* Highest capacity 1985	1986	1987	Lowest capacity 1985	1986	1987	1986-87 net change in: Highest capacity	Lowest capacity
U.S. total	105%	106%	107%	121%	125%	130%	38,770	39,061
Federal prisons	125	127	137	154	160	172	880	-84
State prisons	105	104	105	119	124	120	37,884	39,045

Note: States were asked to report their rated, operational, and design capacities. Tabulations reflect the highest and lowest of the three capacities reported for 1985, 1986, and 1987.

*Excludes State-sentenced inmates held in local jails due to crowding where they have been included in the total prisoner count.

Crime and prison population growth

There is some evidence that during the 1980-86 period changes have occurred in criminal justice policies that have increased a criminal's probability of being incarcerated from levels existing during the previous decade. Murder, nonnegligent manslaughter, rape, robbery, aggravated assault, and burglary are among the most serious crimes, and they account for more than half of prison commitments from the courts. In 1960 there were 62 prison commitments for every 1,000 of these crimes reported to the police (table 10). During the rest of the decade this ratio steadily declined, reaching 23 in 1970, and was relatively stable during the 1970's. Between 1980 and 1986 the ratio increased about 72%, from 25 commitments per 1,000 reported crimes to 43.

Similarly, between 1960 and 1970 the ratio of prison commitments to adult arrests for these selected crimes declined from 299 per 1,000 to 170. This ratio was relatively stable during the rest of the 1970's, but it increased by 37% between 1980 and 1986, from 196 commitments per 1,000 adult arrests to 268. (See "Methodological note" for more detail on these data.)

Table 10. Court commitments to State prisons relative to offenses and arrests, 1960-86

Year	Commitments to prison per 1,000 selected serious offenses	adult arrests for serious offenses
1960	62	299
1965	45	261
1970	23	170
1975	26	185
1980	25	196
1981	29	214
1982	35	219
1983	39	247
1984	39	246
1985	42	264
1986	43	268

Note: Selected offenses include murder, nonnegligent manslaughter, forcible rape, robbery, aggravated assault, and burglary. Data for crimes reported to the police and adult arrests are from the Federal Bureau of Investigation, *Crime in the United States, 1970-86* (Washington, D.C.: U.S. Government Printing Office). Commitments to prison are inmates admitted from sentencing courts. The data on which this table is based are presented in the appendix table.

Admissions-to-crime ratios for individual States provide an alternative measure of prison use to population-based rates. Population-based incarceration rates take into account the number of sentenced prisoners and the size of the resident population in a jurisdiction. The crime-based rate measures entry into prison relative to the magnitude of the crime problem during a year.

Between 1980 and 1986, commitments to State prisons grew by 43% relative to population but by 72% relative to reported crime (table 11).

Methodological note

This bulletin is based upon an advance count of prisoners conducted immediately after a calendar year ends. A detailed, final count of prisoners and prisoner movements is published at a later time.

The data used to compute the rates in table 10 are presented in the accompanying appendix table.

Table 11. State prison admissions relative to selected serious offenses and the adult population, by State, 1980 and 1986

Region and State	Admissions per 1,000 selected offenses 1980	1986	Percent change 1980-86	Admissions per 100,000 adults 1980	1986	Percent change 1980-86
U. S. total	25	43	72%	80	114	43%
Northeast	15	34	127%	48	76	58%
Connecticut	37	46	24	105	97	-8
Maine	28	46	64	54	59	9
Massachusetts	8	19	138	26	40	54
New Hampshire	14	35	150	30	41	37
New Jersey	14	33	136	49	72	47
New York	13	38	192	56	111	98
Pennsylvania	17	31	82	33	45	36
Rhode Island	12	22	83	35	46	31
Vermont	32	55	72	77	81	5
Midwest	28	41	46%	71	89	25%
Illinois	32	34	7	78	91	17
Indiana	37	65	76	78	108	38
Iowa	28	41	46	50	67	34
Kansas	26	40	54	69	84	22
Michigan	20	27	35	67	85	27
Minnesota	12	24	100	25	41	64
Missouri	24	45	88	74	104	41
Nebraska	35	42	20	56	58	4
North Dakota	47	82	74	36	50	39
Ohio	45	61	36	97	117	21
South Dakota	61	134	120	71	126	77
Wisconsin	23	42	82	46	60	30
South	38	53	39%	116	156	34%
Alabama	45	46	2	138	114	-17
Arkansas	50	51	2	104	100	-4
Delaware	30	76	153	88	150	70
District of Columbia	36	74	106	213	308	45
Florida	24	49	104	109	207	90
Georgia	49	66	35	156	193	23
Kentucky	45	48	7	86	77	-10
Louisiana	31	40	29	100	128	28
Maryland	30	43	43	107	119	11
Mississippi	43	66	53	97	128	32
North Carolina	61	81	33	150	164	10
Oklahoma	38	58	53	111	179	61
South Carolina	47	63	34	153	175	14
Tennessee	33	34	3	89	85	-4
Texas	38	49	29	129	188	46
Virginia	36	76	111	75	113	51
West Virginia	28	38	37	38	40	5
West	17	35	106%	66	115	74%
Alaska	42	118	183	115	280	143
Arizona	24	44	83	97	154	59
California	15	34	127	66	122	85
Colorado	16	28	75	55	88	60
Hawaii	9	30	233	28	64	129
Idaho	34	50	47	78	89	14
Montana	34	55	62	55	73	33
Nevada	38	77	100	134	237	76
New Mexico	17	36	112	53	132	149
Oregon	27	37	37	89	135	51
Utah	16	34	112	39	60	54
Washington	14	19	36	40	52	30
Wyoming	27	66	147	71	90	27

Note: Explanatory notes for each jurisdiction are reported in the appendix. Prisoner counts for 1986 may differ from those reported in previous publications and are subject to revision as updated figures become available.

[a] The number of prisoners sentenced to more than 1 year per 100,000 resident population on December 31, 1987.

[b] Figures for 1986 are not comparable to previous years because of the inclusion of additional jail inmates. Counts and incarceration rates of those sentenced to more than 1 year are comparable to figures reported in previous years.

Appendix table. Data used to compute the rates in table 10

Year	Number of court commitments to prison for any offense	Number of selected serious offenses reported to the police	Estimated number of adult arrests for same offenses
1960	74,000	1,296,600	250,400
1965	76,700	1,600,000	300,601
1970	87,000	3,043,000	394,678
1975	115,000	4,773,000	606,724
1980	138,300	5,136,750	660,063
1981	149,120	5,141,500	691,406
1982	166,040	4,760,400	742,813
1983	173,300	4,397,000	701,003
1984	168,807	4,357,000	677,671
1985	180,131	4,606,760	690,004
1986	202,216	4,770,060	757,101

Note: The number of court commitments to prison is based upon the total number of entries from sentencing courts with sentences greater than 1 year. The number of reported offenses is derived from annual publications from the FBI on the number of murders, nonnegligent manslaughters, forcible rapes, robberies, aggravated assaults, and burglaries reported to police agencies. The estimated number of adult arrests for these crimes is derived by multiplying the estimated total number of arrests by the percentage of known arrests age 18 and older, as reported annually by the FBI. For 1960 and 1965, estimates of adult arrests were based on FBI data for total known arrests for those years and were weighted for reporting coverage (see Crime in the United States, 1970, table 25). By year, the percentage of adult arrests among all arrests for these crimes was:

1960 · 66.7%	1982 · 71.8%
1965 · 61.4%	1983 · 73.1%
1970 · 61.5%	1984 · 73.0%
1975 · 66.0%	1985 · 73.2%
1980 · 67.4%	1986 · 74.4%
1981 · 68.1%	

Explanatory notes

Alabama. Capacity in residential community programs is not included in the reported capacity figures.

Alaska. In this State, prisons and jails form one integrated system. All NPS data include, therefore, both jail and prison populations.

Arkansas. Population counts for male inmates with over 1 year maximum sentence include an undetermined number of inmates with a sentence of 1 year or less. The male population counts exclude 59 male inmates housed in local jails due to crowding. The Arkansas Department of Corrections has only one type of capacity, which is set by the Board of Corrections. This capacity is reported in operational capacity.

California. Population counts are based on custody data.

Colorado. Population counts for inmates with over 1 year maximum sentence include an undetermined number of inmates with a sentence of 1 year or less. Population counts exclude 266 male inmates housed in local jails awaiting pickup. Capacity figures include 350 spaces in community centers.

Connecticut. In this State, prisons and jails form one integrated system. All NPS data include, therefore, both jail and prison populations.

Delaware. In this State, prisons and jails form one integrated system. All NPS data include, therefore, both jail and prison populations.

District of Columbia. Population counts are based on custody data. Those inmates housed in Federal Bureau of Prisons facilities, as a result of crowding, are not included. In the District of Columbia, prisons and jails form one integrated system. All NPS data include, therefore, both jail and prison populations.

Federal. Population counts for unsentenced inmates include 2,366 males and 19 females who come under the jurisdiction of the U.S. Immigration and Naturalization Service. Capacity figures apply to Bureau of Prisons institutions only and do not include capacity provided by contract facilities.

Florida. Population counts are based on custody data.

Georgia. Inmates housed in local jails awaiting pickup are not included in the jurisdiction population until they enter a State prison, according to department policy. Georgia has 1,053 sentenced males and 86 sentenced females for whom sentence length has not been recorded in the data system. Georgia estimates that 402 of these males and 18 of these females have maximum sentences greater than 1 year, and 651 of these males and 68 of these females have sentences of 1 year or less.

Hawaii. In this State, prisons and jails form one integrated system. All NPS data include, therefore, both jail and prison populations.

Idaho. Population counts are based on custody data taken as of February 8, 1988.

Indiana. Population counts are based on custody data.

Iowa. Population counts are based on custody data.

Kentucky. Population counts are based on custody data. Population counts exclude 896 male and 67 female inmates housed in local jails due to crowding.

Maine. Operational capacity figures include temporary housing.

Maryland. While population totals are actual manual counts, the breakdowns for sentence length are estimates extracted from the actual sentence length breakdowns of the automated data system applied to the manual data.

Massachusetts. Population counts are based on custody data. Population counts for inmates with over 1 year maximum sentence include an undetermined number of inmates with a sentence of 1 year or less. Population totals are actual counts; however, the male/female breakdown is an estimate believed to be within .1% of the actual disaggregation. By law, offenders in Massachusetts may be sentenced to terms of up to 2 1/2 years in locally operated jails and correctional institutions. Such populations are excluded from the State count but are included in the published population counts and rates for local jails and correctional institutions.

Michigan. Population counts only include inmates in Michigan's custody and inmates in the Community Residential Program. Capacity figures exclude the capacities of the Community Residential Program.

New Hampshire. New Hampshire has no facility to house female inmates. Thus, all females are housed in county, Federal, or other States' facilities.

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New Jersey. Population counts exclude 1,744 of the 2,180 male and 103 female inmates housed in local jails due to crowding. Capacity figures include 400 bedspaces in county facilities under County Contract and County Assistance Programs.

North Carolina. While population totals are actual counts, the breakdowns for sentence length are estimates believed to be accurate within 1% of the actual counts.

Ohio. Population counts for inmates with over 1 year maximum sentence include an undetermined number of inmates with a sentence of 1 year or less.

Oklahoma. Population counts for inmates with over 1 year maximum sentence may include a small undetermined number of inmates with a sentence of 1 year.

Oregon. Population counts are for all inmates in Oregon's jurisdiction including those out to hospitals, out to court, and out on furlough. For operational capacity Oregon reported figures for actual bed occupancy count as of December 31, 1987.

Rhode Island. In this State, prisons and jails form one integrated system. All NPS data include, therefore, both jail and prison populations.

Tennessee. Population counts are based on custody data. Population counts exclude 1,610 inmates housed in local jails due to crowding.

Texas. Population counts are based on custody data.

Vermont. Population counts are as of December 31, 1987. In this State, prisons and jails form one integrated system. All NPS data include, therefore, both jail and prison populations. The counts for jail crowding include 10 male inmates housed in local lockups.

Washington. Capacity figures exclude space in work-release facilities, which housed 560 male and 37 female inmates on December 31, 1987.

West Virginia. The female population counts are based on custody data. The male jurisdiction count excludes an undetermined number of inmates housed in local jails awaiting pickup.

Wyoming. Population counts are estimates believed to be within 3% of the actual counts. The operational capacity figure is total bedspace, and it includes 60 bedspaces in community centers.

New from BJS

- BJS data report, 1987, NCJ-110643, 5/88
- International crime rates (BJS Special Report), NCJ-110776, 5/88
- Prisoners in 1987 (BJS Bulletin), NCJ-110331, 4/88
- Bureau of Justice Statistics annual report, fiscal 1987, NCJ-109928, 4/88
- Motor vehicle theft (BJS Special Report), NCJ-109978, 3/88
- National Crime Survey preliminary data for 1987 (press release), 3/88
- Motor vehicle theft (BJS Special Report), NCJ-109978, 3/88
- Drunk driving (BJS Special Report), NCJ-109945, 2/88
- Felony laws of the 50 States and the District of Columbia, 1986, $14.70 postpaid, NCJ-105066, 2/88, 354 pp.
- Correctional populations in the United States, 1985, NCJ-103957, 2/88
- Data center & clearinghouse for drugs & crime (brochure), BC-000092, 2/88
- Drugs and crime: A guide to BJS data, NCJ-109956, 2/88
- Pretrial release and detention: The Bail Reform Act of 1984 (BJS Special Report), NCJ-109929, 2/88
- Profile of State prison inmates, 1986 (BJS Special Report), NCJ 109926, 1/88
- Tracking offenders, 1984 (BJS Bulletin), NCJ-109686, 1/88

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U.S. Department of Justice
Bureau of Justice Statistics Special Report

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Bureau of Justice Statistics
Special Report

The Prevalence of Imprisonment

By Patrick A. Langan, Ph.D.
with the assistance of
Lawrence A. Greenfeld
BJS Statisticians

In the 1960s, while crime soared, prison populations declined. What followed in the 1970s was a marked shift in national opinion: increasingly, the public began to demand that the justice system get tougher with criminals.[1]

The response of the justice system seemed immediate. From 1970 to 1979, the imprisonment rate surged a record 39%, the largest single decade increase since the 1920s, when the Federal government started keeping records on State and Federal prison populations. The 32% increase during the 1930s is the closest any other decade has come to this record.

Since the 1970s, imprisonment rates have continued to climb. With a 30% increase in just the first five years of the 1980s, and with further increases projected for the remainder of the decade, indications are that the imprisonment rate increase of the 1980s may turn out to be the biggest ever.

The significance of these statistics on the changing imprisonment rate is that they are a measure—perhaps the measure—by which the public ga[illegible] government response to crime. [illegible] these statistics do not speak for themselves. The changing imprisonment rate is actually a measure of the number of persons (usually per 100,000 population) in prison on a single day in one year relative to the number in prison on a single day in another year. The various implications of a change in these single-day counts are not obvious.

July 1985

With this study, the Bureau of Justice Statistics introduces a new statistical indicator measuring the use of imprisonment as a sanction for crime. The prevalence of imprisonment indicator, along with the annual count of prison inmates, gives a comprehensive portrait of the American prison system in both static and dynamic terms. While the annual count of inmates reveals the number of prison inmates on 1 day, the prevalence indicator measures the cumulative effect on the Nation's population of admitting and releasing inmates from State prisons.

The findings of this study question some widely held beliefs about prisons, about deterrence (the inhibiting effect of the threat of imprisonment on the criminal activity of people), and about incapacitation (the effect that prisons have on reducing crime by preventing offenders from committing crimes in society). The fact that so few criminals go to prison relative to the large volume of serious crime convinces many that prisons cannot possibly have much of a deterrent or incapacitative effect on crime. Assessing the States' use of imprisonment in dynamic terms, however, reveals that the proportion of the Nation's population affected by imprisonment is higher than might previously have been realized. Moreover, it suggests that the deterrent and incapacitative potential of prisons may be larger than previously thought.

Estimates of the prevalence of incarceration are useful for a number of other reasons as well. Presenting incarceration rate data in this form facilitates comparison of the likelihood of imprisonment with other prevalence indicators of significant life events increasingly being used to convey important epidemiological information to the public. These data are valuable for planning purposes in anticipating future prison populations. The prevalence indicator is also useful for measuring recidivism, or the percentage released from prison who eventually return to serve another sentence. These detailed measures of lifetime recidivism establish a national benchmark (the first of its kind) against which future claims of superior correctional efficacy can be evaluated.

Steven R. Schlesinger
Director

This study translates imprisonment rates into more easily understood terms, better to convey the implications of record prison population growth in the 1970s. The findings presented disclose that the proportion of the popolation punished by imprisonment (and, by implication, found guilty of serious crime) is much larger than many may realize and is also much larger than the single-day prison population counts indicate.

The study also shows that about half of all prison admissions do not return for subsequent reincarceration.

This study introduces a new statistical indicator measuring the pervasiveness of State imprisonment. The BJS indicator of prevalence of imprisonment measures both the percentage of the Nation's population confined in State prisons on any given day and the percentage that will ever have served a State prison sentence in their lifetime. This indicator is more readily understood than the conventional "rate per 100,000" used to measure imprisonment levels; it facilitates comparisons of the likelihood of imprisonment with other prevalence indicators of significant life events (such as the lifetime probability of being in a serious automobile accident or of contracting a particular disease).

The prevalence of imprisonment indicator has many other applications. It may be valuable for planning purposes if it is applied in local contexts to anticipate future needs for prison space. Researchers may use it in a variety of contexts to study public policy toward crime control. It can be used to measure prison recidivism, or the percentage of State prison inmates who return to prison to serve additional sentences. The establishment of such a national barometer (the first of its kind) of how successful the Nation's State prisons are in reducing crime may become a benchmark against which future claims of superior correctional efficacy can be evaluated.

Summary of findings

As used in this study, the term "prevalence" of State imprisonment initially refers to the probability of being in prison on any given day; and, later, to the probability in a person's lifetime of ever serving a prison sentence.[2] Recidivism refers to the chances in a person's lifetime of returning to prison after serving a prior prison sentence.

Between 62 and 71% of all first-time prison admissions do not return to prison a second time. Among second-time prison admissions, between 54 and 63% do not return for a third imprisonment; while 47 to 58% of third-time admissions do not serve a fourth prison sentence. As would be expected, the recidivism rate among inmates increases with the number of prison sentences served, since the more hardened, habitual offenders make up an increasing proportion of second, third and fourth-time prison admissions.

Differences in recidivism between the sexes and between the races are found to be much smaller than differences in prevalence. In other words, recidivism rates among male and female criminals show small differences, although males have a much higher probability than females of being in prison on any given day or of serving a prison sentence in their lifetime. Similarly, recidivism rates among black criminals and white criminals show little difference although blacks are more likely than whites either to be in prison on any given day or to serve a prison sentence in their lifetime.[3,4]

During the period from 1970 to 1982 (the most recent period for which race-specific national data are available), the prevalence of imprisonment on any given day increased for all six of the segments that make up the Nation's population: white males, black males, other males, white females, black females, and other females. The largest increase occurred among white females; the smallest increase occurred among other females.

From 1973 to 1979 (the most recent period for which extensive national data are available), estimates of the lifetime prevalence of a first imprisonment increased for all four of the population segments for which data are available: white males, black males, white females, and black females. The largest increase occurred among black females; the smallest increase occurred among white females.

The probability of being in prison on any given day or of ever serving a prison sentence (aside from being convicted) varies more by sex than by race. Still, among males and females, blacks are found to have higher chances than whites of being in prison on any given day or of ever serving a prison sentence in their lifetime.[5] This finding neither confirms nor rules out the possibility of racial discrimination by the justice system. Compelling evidence relevant to that issue comes not from studies comparing the racial composition of prison populations with the racial composition of the national population, but from studies comparing the racial composition of prison populations with that of all offenders engaged in serious, imprisonable crime.

The data

This report is one in a series using national data on crime to address issues of public and policy concern. The report presents results from a study based on surveys and censuses sponsored by the Bureau of Justice Statistics.

The Bureau of Justice Statistics (BJS) is a Federal government agency with major responsibility for the collection, analysis, and dissemination of statistical data on crime and justice. BJS obtains its statistical data through periodic censuses and surveys. An annual census of inmates of State prisons provides counts of the number and demographic characteristics of persons in prison confinement. A survey of inmates of State prisons, conducted about every five years, provides more extensive information on confined persons.

BJS has sponsored two nationwide surveys of inmates of State prisons. The first was conducted in January 1974,[6] the second in October 1979.[7] Both involved face-to-face interviews with large, representative samples of inmates of State prisons.[8] (See appendix tables A and B for details.)

The most recent inmate censuses and the two inmate surveys form the basis for a study of the prevalence of State imprisonment. "Prevalence" refers to the proportion of the Nation's population in prison. The term can apply to the entire population of the United States, as in the question "what percentage of the total U.S. population is in prison on a single day?" or "what percentage of the total U.S. population will ever have been in prison in their lifetime?" It can also refer to population segments, as in the question "what percentage of the Nation's males are in prison on a single day?" or "what percentage of the Nation's males will ever have been in prison in their lifetime?"

The subject of this study is the prevalence of imprisonment among six population segments: white males, black males, males of all other races (hereafter referred to as "other" males; they are Asian, Pacific Islander, American Indian, and Alaskan Native),[9] white females, black females, and females of all other races (hereafter referred to as "other" females). A long-standing tradition exists in criminological research for investigations into the demographic characteristics of apprehended offenders. The subject is relevant to key issues in criminology, including, for example, the causes and prevention of crime, the prediction of future criminality, the measurement of offender characteristics, and equality in justice administration.[10]

Interest in population segments also stems from two facts about prisons in the United States. First, inmate populations are almost exclusively male. For example, from 1970 to 1982, males were not quite 50% of the general population of the United States but were approximately 96% of State prison populations. (During this period they were also 90% of the persons arrested for FBI Uniform Crime Reports Index violent crime and from 78% to 79% of all those arrested for UCR index property crime.)[11] Second, prisons contain proportionately more blacks than the general population. From 1970 to 1982, 11% of the total adult population of the United States was black. Throughout this same period (the most recent period for which national data on the racial composition of State prison populations are available), 47% of prisoners confined in adult State prisons were black. However, during this period, blacks were also 44% to 47% of all the persons arrested for UCR index violent crime and 29% to 33% of all those arrested for UCR index property crime.

The report begins with the prevalence of State imprisonment in the United States on any given day in the years 1978 (the first year in which the annual prison census collected information on race) to 1982 (the most recent year for which race-specific national data are available).

What is the prevalence of adult State imprisonment on any given day?[12]

Total (table 1). Data indicate that, on any given day, prisoners in all the adult State prisons in the United States number about one-fifth of 1% of the Nation's total adult population (or about 1 in every 500 adults). During the period from 1978 to 1982, the prevalence of State imprisonment increased each year from a low of .175% in 1978 (or 1 in every 571 adults) to a high of .227% in 1982 (or 1 in every 441 adults).

Sex (table 1). On any given day males are about 26 times more likely to be in prison than females. From 1978 to 1981 the ratio fluctuated between 26 and 27 to 1. In 1982 the ratio dropped to 25 to 1, indicating a slight narrowing of the difference in the prevalence of imprisonment between males and females. The prevalence of imprisonment of both males and females increased each year between 1978 and 1982. At yearend 1982, .455% of the Nation's adult males (or 1 in every 220) versus .018% of the Nation's adult females (or 1 in every 5,556) were in State prisons.

Sex and race (table 1). Differences in the prevalence of imprisonment between the sexes are larger than differences between the races, indicating, for example, that the probability of being in prison varies more by sex than by race. Throughout the period from 1978 to 1982, blacks, regardless of their sex, were typically about 8 times more likely to be in prison than either whites or others; but males, regardless of their race, were at least 17 times more likely to be in prison than females of the same race.

Of the six population segments, black males have the highest chances of being in prison on any given day. This conclusion is supported by data from the years 1978 to 1982. During this period black males were at least 8 times more likely to be in prison than white males or other males, 204 times more likely than white females, 25 times more likely than black females, and 151 times more likely than other females. On a single day in 1982, the most recent year for which race-specific national data are available, 2.04% of the Nation's adult black males (or 1 in every 49) were in State prisons.

On any given day white females are the least likely of the six population segments to be in prison. This conclusion is supported by data from the period 1978 to 1982, throughout which white females had the lowest one-day prevalence rates. Their highest rate over this period occurred in 1982, when 1 in every 10,000 adult white females in the United States were in a State prison.

Of the three male population segments, other males are apparently least likely to be in prison.[13] From 1978 to 1982 other males were consistently, though only slightly, less likely than white males to be in prison. On December 31, 1982, 1 in every 376 white males vs. 1 in every 437 other males were in State prison confinement.

Of the three female population segments, black females have the highest chances of being in prison on any given day in the United States. Throughout the period from 1978 to 1982, black females were at least 8 times more likely to be in prison than white females and at least 6 times more likely than other females.

From 1978 to 1982, the prevalence of imprisonment increased overall among each of the six population segments. The largest increase over the five-year span occurred among white females (a 43% increase); the smallest occurred among other females (a 9% increase).

Sex, race, and age (table 2). Data from the inmate surveys (the only available source of national data on the age composition of the prison population) indicate that the prevalence of imprisonment is highest among black males in their twenties. On a single day in 1974, an estimated 2.55% (or 1 in every 39) of all the black males aged 20 to 29 in the United States were in State prisons.[14] On a single day in 1979 (the most recent year for which age-specific national data are available), a significantly higher (at the .05 level) percentage, or an estimated 3.03% (1 in every 33) of all the black males aged 20 to 29 in the United States, were in State prisons.[15] The 1974 and 1979 estimates for black males are significantly higher (at the .05 level) than comparable age-specific estimates for white males, other males, white females, black females, or other females.

What is the lifetime prevalence of adult State imprisonment?[16]

Although only about one-fifth of 1% of the Nation's adult population is in State prison confinement on any given day, this seemingly small figure can be misleading. Imprisonment of even a small fraction of a population as large as that of the United States (roughly 175 million adults) translates to hundreds of thousands of persons in State prisons (429,603 as of December 31, 1984).[17] Moreover, the small fraction in confinement on a single day masks the possibility that over some period longer than a day (say, a life-

Table 1. The prevalence of State imprisonment of adults in the United States on December 31, 1978 to 1982, total adult population, by sex, and by sex and race

Population segment	Percent of adult population 18 and over in State prisons on December 31, 1978	1979	1980	1981	1982
Total*	.175%	.179%	.188%	.204%	.227%
Male*	.353	.359	.373	.411	.455
White	.204	.209	.218	.242	.266
Black	1.665	1.687	1.703	1.859	2.044
Other**	.192	.202	.189	.207	.229
Female*	.013	.014	.014	.016	.018
White	.007	.007	.007	.009	.010
Black	.062	.063	.062	.073	.082
Other**	.011	.011	.009	.011	.012

NOTE: Rounding obscures certain year-to-year increases in the prevalence of imprisonment. Also, some table percentages are very slightly inflated since they are based on a numerator (the number of inmates) that includes persons under age 18 and a denominator (the adult population) that only includes persons 18 and over. Inmate population data are from the annual publication Prisoners in State and Federal Institutions on December 31, 1978, 1979, 1980, 1981, and 1982, U.S. Department of Justice, Bureau of Justice Statistics, Washington: USGPO, 1980, '81, '82, '83, and '84, respectively. U.S. population estimates for the years 1978 to 1981 are from U.S. Census Bureau, Current Population Reports, Series P-25, No. 917, Preliminary Estimates of the Population of the United States, by Age, Sex, and Race: 1970 to 1981, USGPO, Washington, D.C., 1982; for the year 1982, from U.S. Census Bureau, Current Population Reports, Series P-25, No. 929, Estimates of the Population of the United States, by Age, Sex, and Race: 1980 to 1982, USGPO, Washington, 1983.

*Includes inmates whose race is not known.

**Includes Asian, Pacific Islander, American Indian, and Alaskan Native.

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Table 2. The prevalence of State imprisonment of adults in the United States on a single day in 1974 and 1979, by sex, race and age

Population segment	Percent of population in State prisons on a single day					
	13-19	20-29	30-39	40-49	50-59	60 and over
1974						
Male						
White	.057%	.304%	.208%	.106%	.045%	.014%
Black	.306	2.550	1.444	.753	.329	.091
Female						
White	*.001	.012	.010	.004	*.001	*.0001
Black	.012	.079	.040	*.008	*.004	*.001
1979						
Male						
White	.068	.410	.246	.128	.043	.011
Black	.443	3.027	2.003	.758	.300	.123
Female						
White	.003	.016	.010	.005	.002	*.0001
Black	.009	.124	.094	.035	.012	*.003

NOTE: Estimates applicable to all other races are not shown because of known inconsistencies between census and survey procedures for designating "other" race. Table percentages are computed from data contained in two sources: estimates of inmates of adult State prisons are from the 1974 and the 1979 nationwide surveys of inmates of State correctional institutions; U.S. population estimates are from U.S. Bureau of the Census, Current Population Reports, Series P-25, No. 917, Preliminary Estimates of the Population of the United States, by Age, Sex, and Race: 1970 to 1981, USGPO, Washington, 1982, Table 1, pp. 11-12, 18-19.

*Estimate is based on 10 or fewer sample cases.

time) the percentage of the population that will ever have been in prison may be substantial.

The lifetime prevalence of imprisonment in an adult State prison is estimated from information on persons entering adult State prisons in the United States in a single year. The number of persons entering at each age for the first time in their lives is critical for this purpose. The number of such first admissions at each age, as a fraction of the total U.S. population at that age, indicates the probability of a first imprisonment occurring at each age. If first-time imprisonment rates are stable over a long period of time, then the sum of the probabilities of first imprisonments at each age forms an estimate of the lifetime prevalence of imprisonment in an adult State prison.[18] Thus, for example, the lifetime prevalence of imprisonment for males (see appendix table C) is the probability of a male serving a first sentence at age 13 (the youngest age, recorded in an inmate survey, of a male entering an adult State prison to serve a first sentence),[19] plus the probability of a male serving a first sentence at 14, plus the probability of a male serving a first sentence at 15, and so on through age 84 (an arbitrarily selected upper age limit). Though estimates of lifetime prevalence determined in this way are in one sense hypothetical, they will apply to real populations if the annual imprisonment rates from which they are computed remain stable into the future.[20]

Lifetime prevalence estimates presented here are primarily based on the two inmate surveys carried out during the 1970's. The 1974 survey provides detailed information on a sample of persons admitted to State prisons in the United States in 1973 (see appendix tables A and B) and, in conjunction with a 1973 census of the number of State prison admissions, is used to produce two estimates of the lifetime prevalence of State imprisonment in the United States: an inmate survey estimate and an admissions census estimate. The second survey, conducted in October 1979, provides details on a sample of persons admitted to State prisons in the United States in the year 1979 (see tables A and B in the appendix) and, in conjunction with a 1979 census of the number of State prison admissions, is also used to produce two estimates of the lifetime prevalence of State imprisonment in the United States: an inmate survey estimate and an admissions census estimate.

The reason for two estimates (an inmate survey estimate and an admissions census estimate) in each case (1973 and 1979) rather than a single estimate is that the number of first admissions to State prisons in a given year—which, to repeat, is critical for estimating the lifetime prevalence of imprisonment—is nowhere recorded explicitly. Available national data are capable only of establishing a range within which the actual number probably lies.

The 1974 and 1979 inmate surveys both provide an underestimate of the total number of sentenced adults admitted to State prisons in 1973 and 1979 because it is unlikely that all the sentenced adults admitted in 1973[21] and 1979[22] were in prison at the precise time the inmate surveys were conducted. (To illustrate, the 1979 inmate survey was conducted before the end of 1979 and therefore could not possibly have included every inmate admitted in 1979.) A 1973 census and a 1979 census of admissions of sentenced persons to adult State prisons both provide an overestimate of the total number of sentenced adults admitted to State prisons in 1973 and 1979 because it is likely that some of the inmates were counted more than once in the censuses when, for one reason or another, they were admitted to prison more than one time in 1973[23] or 1979.[24]

The 1974 and 1979 inmate surveys both provide an estimate of the number of sentenced persons at each age who were admitted to State prisons for the first time in their lives in the years 1973 and 1979, respectively.[25,26] (See appendix tables A and B for details.) These numbers are used to calculate inmate survey estimates of the lifetime prevalence of imprisonment. When multiplied by certain constants corresponding to the factor by which census counts exceed survey estimates,[27] these numbers are also used to calculate admissions census estimates of the lifetime prevalence of imprisonment. Admissions census estimates take into account the fact that more sentenced persons entered prisons in 1973 and 1979 for the first time in their lives than the 1974 and 1979 inmate surveys indicate; the constants give some indication of how many more.

To illustrate, the 1979 inmate survey estimates that 87,881 sentenced males entered State prisons in 1979. The 1979 admissions census records 141,477 admissions of sentenced males in 1979. Thus the census suggests about 1.6 times (1.6098702 to be precise) more male admissions than the survey. Multiplying the inmate survey estimate of the number of male first admissions at each age by the constant 1.6 (actually 1.6098702) produces the numbers that are used to calculate the 1979 admissions census estimate of the lifetime prevalence of imprisonment of males.[28]

In summary, data for each of two years (1973 and 1979) are used to calculate two estimates of the lifetime prevalence of adult State imprisonment (an inmate survey estimate and an admissions census estimate). Each estimate's size is determined by the number of persons estimated to have been admitted to prison for the first time in their lives in 1973 and 1979, which in turn is determined by imprisonment levels in 1973 and 1979, respectively. Because the inmate survey provides an underestimate and the admissions census an overestimate of the lifetime prevalence of imprisonment, the true figure lies somewhere in between.

Total (table 3). At 1973 imprisonment levels, a person born in the United

States today is estimated to have between a 1.3% (or 1 in 77) and 2.1% (or 1 in 48) lifetime chance of serving a sentence in an adult State prison. These figures do not show that between 1.3% and 2.1% of all the elderly people in the Nation today have a prison record in their background. What they do show is that, if imprisonment rates continue long into the future at their 1973 levels, the day will eventually come when between 1.3% and 2.1% of the Nation's elderly will have served at least one prison sentence in their lifetime.

From 1973 to 1979, a significant (at the .05 level) increase in the prevalence of first admissions occurred.[29] Consequently, estimates of the lifetime prevalence of imprisonment based on these years increased significantly by about 30% from 1973 to 1979. At 1979 imprisonment levels, a person born in the United States today is estimated to have between a 1.7% (or 1 in 59) and 2.7% (or 1 in 37) lifetime chance of serving a sentence in an adult State prison.

Sex (table 3). At 1973 imprisonment levels, a male in the United States is almost 15 times more likely to serve a prison term in his lifetime than a female. A male has between a 2.5% (or 1 in 40) and 4% (or 1 in 25) chance in his lifetime of serving a State prison sentence, whereas a female has between a .17% (or 1 in 588) and .27% (or 1 in 370) lifetime chance.

At 1979 imprisonment levels, a male is about 14 times more likely to serve a State prison term in his lifetime than a female. Between 3.2% (or 1 in 31) and 5.1% (or 1 in 20) of the males born in the United States, versus between .25% (or 1 in 400) and .37% (or 1 in 270) of the females, would be expected to serve a State prison sentence in their lifetime if 1979 imprisonment levels continue into the future.

The slight narrowing of the difference in the lifetime prevalence of imprisonment between males and females that occurred from 1973 to 1979 reflects the fact that female incarceration rates during this period increased faster than male rates. Nevertheless, for both males and females a significant (at the .05 level) increase occurred from 1973 to 1979 in the number of first admissions to prison. As a result, estimates of the lifetime prevalence of imprisonment based on data from these years also increased significantly for both males and females. Admission census estimates increased 30% for males and 34% for females.

Sex and race (table 3). Differences in the lifetime prevalence of imprisonment between the sexes are larger than differences between the races, indicating that the lifetime probability of imprisonment varies more by sex than by race. Based on both 1973 and 1979 prison data, blacks, regardless of their sex, are 6 to 7 times more likely than whites to serve a sentence in their lifetime; but males, regardless of their race, are more than 12 times more likely to serve a sentence in their lifetime than females of the same race.

It is estimated that a black male born in the United States today is 6 (at 1979 imprisonment levels) to 7 times (at 1973 levels) more likely to serve a State prison sentence in his lifetime than a white male. Between 10.2% (or 1 in 10) and 18.5% (or 1 in 6) of black males, versus between [illegible] (or 1 in 67) and 2.4% (or 1 in [illegible] males, would be exp[illegible] State sente[illegible] impris[illegible] futur[illegible] born [illegible] to hav[illegible] 9) and [illegible] lifetime [illegible] adult State [illegible] between a 2.1% [illegible] (or 1 in 30) lifetime chance.

A black female is 6 (at 1973 imprisonment levels) to 8 (at 1979 levels) times more likely to serve a prison sentence in her lifetime than a white female. At 1973 imprisonment levels, a white female born in the United States today would have between a .11% (or 1 in 909) and .18% (or 1 in 556) chance in her lifetime of serving a sentence in an adult State prison; a black female, between a .6% (or 1 in 167) and 1% (or 1 in 100) lifetime chance. At 1979 imprisonment levels, a white female born in the United States today would have between a .14% (or 1 in 714) and .2% (or 1 in 500) chance in her lifetime of serving a sentence in an adult State prison; a black female would have between a 1% (or 1 in 100) and 1.5% (or 1 in 67) chance in her lifetime.

For all four population segments for which data are available—white males, black males, white females, and black females—a significant (at the .05 level) increase occurred from 1973 to 1979 in the estimated number of first admissions to adult State prisons. As a result, estimates of the lifetime prevalence of imprisonment based on data from these years also increased significantly. Admissions census estimates indicate that the lifetime prevalence of imprisonment increased 37% for white males, 13% for black males, 11% for

Table 3. Inmate Survey and Admissions Census estimates of the lifetime prevalence of imprisonment in adult State prisons in the United States, based on 1973 and 1979 prison data, total U.S. population, by sex, and by sex and race.

Population segment	Prevalence estimate: percent of population expected to serve a first sentence in lifetime, based on number and demographic characteristics of persons admitted to prison for the first time in their lives in 1973: Inmate Survey	in 1973: Admissions Census	in 1979: Inmate Survey	in 1979: Admissions Census
Total*	**1.300%**	**2.107%**	**1.713%**	**2.743%**
Male*	2.453	3.954	3.182	5.123
White	1.491	2.404	2.053	3.305
Black	10.226	16.438	11.590	18.658
Female*	.168	.273	.251	.367
White	.110	.181	.138	.201
Black	.610	1.004	1.030	1.509

NOTE: Estimates applicable to all other races are not shown separately because of known inconsistencies between census and survey procedures for designating "other" race. Demographic characteristics (including the ordinal number of sentence admitted for) and, in the case of inmate survey prevalence estimates, number of persons admitted to adult State prisons are from the 1974 (Survey of Inmates of State Correctional Facilities and Census of State Adult Correctional Facilities, 1974—ICPSR 7811, U.S. Dept of Justice, BJS, Ann Arbor, MI: ICPSR, Fall 1981) and 1979 (Survey of Inmates of State Correctional Facilities, 1979 - ICPSR 7856, U.S. Dept of Justice, BJS, Ann Arbor, MI: ICPSR, Fall 1981) surveys of inmates of State prisons. In the case of admissions census prevalence estimates, number of persons admitted to adult State prisons based on the inmate surveys are pro-rated to admission counts published in Prisoners in State and Federal Institutions on December 31, 1971, 1972, and 1973 (National Prisoner Statistics Bulletin No. SD-NPS-PSF-1, U.S. Dept of Justice, NCJISS, Washington: USGPO, May 1975), and Prisoners in State and Federal Institutions on December 31, 1979 (National Prisoner Statistics Bulletin No. NPS-PSF-7, NCJ-73719, U.S. Dept of Justice, BJS, Washington: USGPO, February 1981). U.S. population estimates used to calculate prevalence estimates are from U.S. Census Bureau, Current Population Reports, Series P-25, No. 917, Preliminary Estimates of the Population of the United States, by Age, Sex, and Race: 1970 to 1981, Washington: USGPO, 1982, Table 1, pp. 11-12, 18-19. Also, inmate surveys provide underestimates and admissions censuses provide overestimates of the prevalence of imprisonment. In the case of inmate survey estimates for admission year 1979, correction for some of the underestimation can easily be made. Since the 1979 survey was conducted in October 1979, and therefore could not possibly have included all 1979 admissions, 1979 inmate survey prevalence estimates are based on data for 10 out of 12 months in 1979. To pro-rate 1979 inmate survey prevalence estimates to the full 12 months, they should be multiplied by 1.2.
*Includes persons of all other races.

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white females, and 50% for black females. The biggest increase was thus among black females; the smallest increase was among white females.

Estimates of the lifetime prevalence of imprisonment of males and females of all other races are not presented because of known discrepancies between inmate survey and admissions census procedures for classifying inmates of other races.[31]

What is the rate of recidivism among State prisoners?

The lifetime prevalence of a first prison sentence is calculated from information on first imprisonments (table 3). Similarly, the lifetime prevalence of a second sentence is calculated from information on second imprisonments (table 4); a third sentence, from information on third imprisonments (table 5); and, a fourth sentence, from information on fourth imprisonments (table 6). From these estimates of the prevalence of first as well as subsequent imprisonments, recidivism rates—or the rates at which State prisoners return to adult State prisons to serve additional sentences—can be calculated.

The ratio of the lifetime prevalence of a second sentence (table 4) to the lifetime prevalence of a first sentence (table 3) forms a recidivism rate: the percentage of first-timers (persons who serve a first sentence) who return to prison to serve a second sentence. The ratio of the lifetime prevalence of a third sentence (table 5) to the lifetime prevalence of a second (table 4) forms another recidivism rate: the percentage of second-timers (persons who serve a second sentence) who return to prison to serve a third sentence. Lastly, the ratio of the lifetime prevalence of a fourth sentence (table 6) to the lifetime prevalence of a third (table 5) forms another recidivism rate: the percentage of third-timers (persons who serve a third sentence) who return to prison to serve a fourth sentence. These recidivism rates are examined next.[32]

Total (table 7). It is estimated that a first-timer (a person serving a first adult State prison sentence) has a 29% (at 1979 imprisonment levels) to 38% (at 1973 levels) lifetime chance of returning to prison to serve a second sentence. A second-timer (a person serving a second sentence) is estimated to have a 40% (at 1973 levels) to 46% (at 1979 levels) lifetime chance of returning to serve a third sentence. A third-timer (a person serving a third sentence) is estimated to have a 42% (at 1979 levels) to 53% (at 1973 levels) lifetime chance of returning to serve a fourth sentence.[33]

Table 4. Inmate Survey and Admissions Census estimates of the lifetime prevalence of a second imprisonment in adult State prisons in the United States, based on 1973 and 1979 prison data, total U.S. population, by sex, and by sex and race.

Population segment	Prevalence estimate: percent of population expected to serve a second sentence in lifetime, based on number and demographic characteristics of persons admitted to prison for the second time in their lives			
	in 1973		in 1979	
	Inmate Survey	Admissions Census	Inmate Survey	Admissions Census
Total*	**.503%**	**.810%**	**.500%**	**.680%**
Male*	.987	1.391	.963	1.350
White	.607	.878	.581	.935
Black	6.234	6.830	4.806	6.449
Female*	.016	.042	.064	.084
White	**	**	.025	.037
Black	**	**	.188	.271

NOTE: (see note at table 3)
*Includes persons of all other races.
**Estimate not shown because it is based on 10 or fewer sample cases.

Table 5. Inmate Survey and Admissions Census estimates of the lifetime prevalence of a third imprisonment in adult State prisons in the United States, based on 1973 and 1979 prison data, total U.S. population, by sex, and by sex and race.

Population segment	Prevalence estimate: percent of population expected to serve a third sentence in lifetime, based on number and demographic characteristics of persons admitted to prison for the third time in their lives			
	in 1973		in 1979	
	Inmate Survey	Admissions Census	Inmate Survey	Admissions Census
Total*	**.303%**	**.327%**	**.230%**	**.368%**
Male*	.483	.630	.450	.724
White	.333	.376	.275	.443
Black	1.856	3.903	1.670	3.010
Female*	**	**	.018	.033
White	**	**	.008	.013
Black	**	**	.067	.100

NOTE: (see note at table 3)
*Includes persons of all other races.
**Estimate not shown because it is based on 10 or fewer sample cases.

Table 6. Inmate Survey and Admissions Census estimates of the lifetime prevalence of a fourth imprisonment in adult State prisons in the United States, based on 1973 and 1979 prison, total U.S. population, by sex, and by sex and race.

Population segment	Prevalence estimate: percent of population expected to serve a fourth sentence in lifetime, based on number and demographic characteristics of persons admitted to prison for the fourth time in their lives			
	in 1973		in 1979	
	Inmate Survey	Admissions Census	Inmate Survey	Admissions Census
Total*	**.109%**	**.174%**	**.099%**	**.152%**
Male*	.221	.355	.191	.309
White	.124	.199	.138	.219
Black	1.041	1.079	.676	1.088
Female*	**	**	**	**

NOTE: (see note at table 3)
*Includes persons of all other races.
** Estimate not shown because it is based on 10 or fewer sample cases.

Sex (table 7). Even though males are 26 times more likely than females to be in prison on any given day and 14 times more likely ever to serve a sentence in their lifetime, differences in recidivism rates between male and female prisoners are not as great as these differences; and, in one case, the difference is not statistically significant (at the .05 level). Based on both 1973 and 1979 prison data, male first-timers are more likely (significant at the .05 level) to return to prison than female first-timers (40% of males versus 15% of females, based on 1973 data; 30% of males versus 17% of females, based on 1979 data). Male second-timers return to prison to serve a third sentence at the rate of 41% (at 1973 levels) to 47% (at 1979 levels), the

Table 7. Estimated rates of recidivism from adult State prisons in the United States, based on 1973 and 1979 prison data, total State prisoners, by sex, and by sex and race.

Prisoners	Percent of 1st-timers expected to return to prison to serve a 2nd sentence	Percent of 2nd-timers expected to return to prison to serve a 3rd sentence	Percent of 3rd-timers expected to return to prison to serve a 4th sentence
1973			
Total*	38%	40%	53%
Male*	40	41	55
White	41	38	53
Black	41	44	56
Female*	15	**	**
White	**	**	**
Black	**	**	**
1979			
Total*	29	46	42
Male*	30	47	43
White	28	47	49
Black	35	47	36
Female*	17	36	**
White	18	35	**
Black	18	37	**

NOTE: Estimates applicable to all other races are not shown separately because of known inconsistences between census and survey procedures for designating the other races. Also, admissions census estimates (from tables 3 through 6) were used to calculate table percentages. (Except for rounding error, inmate survey estimates produce the same results.)
*Includes prisoners of all other races.
** Estimate not shown because it is based on 10 or fewer sample cases.

latter of which is not significantly higher than the only available rate for female second-timers, the 36% rate based on 1979 imprisonment data. Male third-timers return to prison to serve a fourth sentence at the rate of 43% to 55% (at 1979 and 1973 levels, respectively). Because few females ever serve a third sentence, reliable data on the percentage who return to serve a fourth sentence are not available.

Sex and race (table 7). Although black males are more likely than white males to be in prison on any given day and are also more likely than white males ever to serve a prison sentence in their lifetime, differences in recidivism rates between black male prisoners and white male prisoners are small and, in most cases, not statistically significant. Similarly, black females are more likely than white females either to be in prison on any given day or to serve a sentence in their lifetime, but differences in recidivism rates between black females and white females are also small and, in every case, not statistically significant.

Based on 1973 imprisonment data, white male first-timers (41%) and black male first-timers (41%) do not return to prison at significantly different rates. Based on 1979 data, black male first-timers return to prison to serve a second sentence at a higher rate (35%) than white male first-timers (28%), but the difference, though statistically significant (.05 level), is very small compared to the sevenfold difference in imprisonment prevalence rates between black males and white males. The only available comparable data on recidivism among female first-timers are from the year 1979. Estimates from that year show no significant difference between the rates at which white females (18%) and black females (18%) return to prison to serve a second sentence.

Based on both 1973 and 1979 imprisonment data, the rates at which white male second-timers (38% to 47%, respectively) and black male second-timers (44% to 47%, respectively) return to prison to serve a third sentence are not significantly different. The only comparable data available on recidivism among female second-timers are from the year 1979. Estimates from that year show no statistically significant difference between the rates at which white female second-timers (35%) and black female second-timers (37%) return to prison to serve a third sentence.

Based on 1973 imprisonment data, the rates at which white male third-timers (53%) and black male third-timers (56%) return to prison to serve a fourth sentence are not significantly different. Based on 1979 imprisonment data, the recidivism rate for white male third-timers (49%) is higher (significant at .05 level) than the rate for black male third-timers (36%). The difference, however, is again small and, moreover, in the opposite direction as compared to differences in imprisonment prevalence between the races.

Finally, brief mention is made of the only consistent temporal trend evident in the limited recidivism data available from the years 1973 and 1979.[34] From 1973 to 1979 the recidivism rates of both white male and black male first-timers declined (significant at the .05 level). Some idea of why the consistent decline occurred in the recidivism rates of male first-timers can be derived by looking at tables 3 through 6. For example, table 3 shows an increase in first imprisonments between 1973 and 1979, while table 4 shows little change in second imprisonments. Inevitably, therefore, the probability of a second imprisonment following a first decreases from 1973 to 1979. These figures suggest that the main reason for the increase in overall prison population between 1973 and 1979 was the increase in first imprisonments. An increase in first imprisonments might be expected to be followed by an increase in second imprisonments, but this cannot be confirmed until the planned inmate survey is conducted in late 1985.[35]

Research procedures

This study uses research procedures[36] that have long been known to criminologists (e.g., Ball, Ross, and Simpson, 1964; Belkin, Blumstein, and Glass, 1973; Gordon, 1973; Gordon and Gleser, 1974; Gordon, 1976; and Farrington, 1981) but have only recently been applied for the first time to the subject of the lifetime prevalence of imprisonment (Greenfeld, 1981).[37] These procedures rest on many assumptions (e.g., assumptions about the accuracy of inmates' accounts of their incarceration histories,[38] about the stability of age-specific imprisonment rates, and about the representativeness of inmate survey samples) that have not yet been thoroughly investigated. However, the major findings of this study are robust. Moreover, the prevalence estimates presented in this study understate the level of imprisonment because the study did not include juvenile incarcerations, local jail commitments, and Federal and military sentences in its definition of imprisonment and because 1979 data was the most current available. Since 1979, incarceration rates have increased.

Conclusion

In criminal justice practice, crimes are not neatly divided into those that are imprisonable and those that are nonimprisonable. Whether a crime is imprisonable (meaning the offender stands a high chance of going to prison if apprehended and convicted) usually depends largely on some combination of how serious it is and who commits it. That is, the most serious crimes are imprisonable regardless of who commits them; crimes that are not among the most serious are imprisonable if they are committed by someone with a long or grievous prior record.

It is not possible to specify very precisely what the volume of imprisonable crime is. The most complete source of crime data, the National Crime Survey sponsored by BJS, obtains information from representative samples of the Nation's crime victims. Crime victims can provide many facts about the seriousness of the crimes committed against them but usually cannot be expected to know anything about the criminal backgrounds of the perpetrators. Nevertheless, crime victims' accounts provide a measure, albeit imprecise, of the volume of imprisonable crime.

In 1979, to pick one year, more than

41 million rapes, robberies, assaults, burglaries, larcenies, and motor vehicle thefts were committed against crime victims,[39] and approximately 150,000 criminals were sent to State prisons. Because 150,000 criminals could not possibly commit 41 million crimes (at least not these 150,000 and not in a year's time), it would seem that many crimes and many criminals go unpunished.

Clearly, many crimes do go unpunished. However, this study shows that a significant proportion of the Nation's population is at some point incarcerated in the estimated 403,210 State prison spaces and that about half of all prison admissions do not return for a subsequent prison sentence.[40,41] Whatever the cause of the latter fact, whether it results from deterrence, correction, or simple maturation, it establishes a benchmark against which the effectiveness of alternative corrections programs can be evaluated.

Table A. 1974 inmate survey estimates and sample sizes. (Sample sizes on which estimates are based are shown in parentheses.)

Population segment	Estimated total number of sentenced and unsentenced inmates at time of 1974 survey	Estimated number of sentenced inmates who said they were admitted to State prison in 1973: Total	1st time in life	2nd time in life	3rd time in life	4th time in life	5th or more time in life
Total	190,711 (9,009)	68,482 (2,226)	48,723 (2,029)	15,146 (711)	5,588 (262)	2,750 (128)	2,067 (96)
Male	184,313 (8,711)	65,344 (2,078)	46,344 (1,907)	14,756 (693)	5,464 (254)	2,750 (128)	2,022 (94)
White	93,953 (4,455)	34,323 (1,634)	21,881 (1,086)	7,814 (371)	2,795 (136)	1,316 (81)	1,417 (66)
Black	87,046 (4,099)	29,496 (1,381)	18,522 (883)	6,352 (310)	2,500 (118)	1,335 (42)	757 (28)
Other*	3,315 (157)	1,225 (63)	741 (36)	259 (12)	170 (8)	109 (5)	46 (2)
Female	6,398 (298)	3,138 (148)	2,579 (122)	390 (18)	124 (6)	0 (0)	45 (2)
White	3,881 (169)	1,669 (78)	1,454 (68)	173 (8)	20 (1)	0 (0)	22 (1)
Black	2,078 (127)	1,429 (68)	1,125 (54)	197 (9)	85 (4)	0 (0)	22 (1)
Other*	40 (2)	40 (2)	0 (0)	20 (1)	20 (1)	0 (0)	0 (0)

NOTE: Detail may not add to total shown because of rounding. Also, the 1974 survey actually obtained data on a stratified random sample of 9,040 inmates (or an estimated 191,387 inmates). The table shows 9,009 sample cases (or an estimated 190,711 inmates) because race data were missing on some of the sample cases.
*Includes Asian, Pacific Islander, American Indian, and Alaskan Native.

Table B. 1979 inmate survey estimates and sample sizes. (Sample sizes on which estimates are based are shown in parentheses.)

Population segment	Estimated total number of sentenced and unsentenced inmates at time of 1979 survey	Estimated number of sentenced inmates who said they were admitted to State prison in 1979: Total	1st time in life	2nd time in life	3rd time in life	4th time in life	5th or more time in life
Total	274,554 (11,397)	93,542 (4,221)	62,663 (3,003)	17,717 (746)	7,394 (297)	2,944 (104)	1,727 (69)
Male	263,474 (9,142)	87,881 (3,073)	58,313 (2,077)	16,957 (595)	7,148 (247)	2,904 (98)	1,661 (56)
White	131,250 (4,647)	48,052 (1,715)	32,887 (1,165)	9,049 (324)	3,730 (133)	1,672 (60)	996 (34)
Black	125,573 (4,260)	37,278 (1,307)	24,992 (851)	7,346 (251)	3,199 (107)	1,104 (37)	635 (21)
Other*	6,652 (235)	2,551 (91)	1,714 (81)	563 (20)	218 (8)	27 (1)	30 (1)
Female	11,080 (2,255)	5,661 (1,148)	4,350 (930)	700 (151)	246 (50)	40 (6)	66 (13)
White	5,041 (1,068)	2,637 (558)	2,110 (449)	364 (72)	133 (25)	27 (5)	15 (3)
Black	5,752 (1,135)	2,883 (559)	2,337 (452)	383 (73)	133 (25)	9 (2)	42 (8)
Other*	287 (52)	141 (31)	114 (25)	14 (3)	0 (0)	4 (1)	9 (2)

NOTE: Detail may not add to total shown because of rounding. Also, the survey sample is described as a stratified random sample.
*Includes Asian, Pacific Islander, American Indian, and Alaskan Native.

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Footnotes

[1] The Gallup Poll of public opinion toward capital punishment, if it is any indication, offers dramatic evidence of a shift in the public's mood toward criminals. From the early 1950s to the mid 1960s, progressively smaller proportions of the population said they favored the death penalty. The trend reversed itself in the mid 1960s. From then into the 1980s, larger and larger proportions expressed support for the death penalty (T. Flanagan, et. al., eds. Sourcebook of Criminal Justice Statistics—1981, BJS, Washington: GPO, 1982).

[2] Most of the discussion in the study focuses on the chances of ever serving a first sentence. Nevertheless, the term prevalence, as used in the study, also refers to the chances of ever serving second, third, and fourth sentences.

[3] D. Glaser (The Effectiveness of a Prison and Parole System, New York: Bobbs-Merrill, 1969: 28-29) also concluded that studies of State (and Federal) prisoners indicate little difference in recidivism between whites and blacks.

[4] A. Blumstein and E. Graddy ("Prevalence and Recidivism in Index Arrests: A Feedback Approach," 16 Law and Society Review, 265, 1981-1982), and L. Greenfeld ("Measuring the Application and Use of Punishment," a paper presented at the American Society of Criminology meeting, November 12, 1981) also found major differences in prevalence between the races but very similar recidivism probabilities.

[5] A major advantage of epidemiological studies of this kind is that they facilitate comparisons of the probabilities of diverse life events. For example, the findings of this study can be compared to those of a study of lifetime murder victimization (Langan and Innes, The Risk of Violent Crime, Washington: BJS May 1985 NCJ-97119). Data were analyzed on the age, race, and sex of murder victims in the United States in 1982. The study concluded that the lifetime chances of being murdered were:

BJS estimate of lifetime risk of murder: 1 out of—

U.S. total	133
Male	84
White	131
Black	21
Female	282
White	369
Black	104

[6] Technical documentation for the 1974 survey is contained in Survey of Inmates of State Correctional Facilities 1974: Advance Report, U.S. Dept. of Justice, National Criminal Justice Information and Statistics Service (now BJS), Washington:

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Table C. 1979 inmate survey estimate of the lifetime prevalence of State imprisonment of males.

Age at admission in 1979	Number admitted for first time in life	1979 male population (X 1,000)	Percent of 1979 male population	Cumulative % of 1979 male population	Age at admission in 1979	Number admitted for first time in life	1979 male population (X 1,000)	Percent of 1979 male population	Cumulative % of 1979 male population
13	0	1,890	0.0000000	0.0000000	49	217	1,168	0.0185788	3.0102310
14	0	2,016	0.0000000	0.0000000	50	176	1,088	0.0161765	[illegible]
15	0	2,127	0.0000000	0.0000000	51	159	1,135	0.0140088	3.0404158
16	140	2,148	0.0065238	0.0065238	52	118	1,119	0.0105451	[illegible]
17	1,390	2,177	0.0638493	0.0703730	53	118	1,134	0.0104056	3.0613661
18	3,639	2,196	[illegible]	0.2360833	54	59	1,147	0.0051439	3.0665097
19	5,574	2,254	0.2472935	0.4833766	55	115	1,116	0.0103046	3.0768137
20	6,283	2,243	[illegible]	0.7620009	56	30	1,101	0.0027248	3.0795383
21	5,293	2,197	[illegible]	1.0035200	57	58	1,111	0.0052205	3.0847588
22	5,180	2,158	0.2400370	1.2435570	58	99	1,058	0.0093573	3.0941153
23	3,656	2,070	0.1766182	1.4201748	59	141	1,085	0.0129954	3.1071100
24	3,272	2,069	0.1581430	1.5783178	60	55	940	0.0058511	3.1129608
25	2,742	2,029	0.1351404	1.7134571	61	60	947	0.0063358	3.1192961
26	2,836	1,962	0.1445462	1.8580027	62	58	907	0.0063947	3.1256905
27	2,415	1,926	0.1253893	1.9833918	63	0	894	0.0000000	3.1256905
28	2,012	1,804	0.1115298	2.0949211	64	131	880	0.0148864	3.1405764
29	1,807	1,850	0.0976756	2.1925964	65	28	843	0.0033215	3.1438971
30	1,460	1,857	0.0786214	2.2712173	66	0	808	0.0000000	3.1438971
31	1,167	1,801	0.0647973	2.3360136	67	28	766	0.0036554	3.1475515
32	1,073	1,942	0.0552523	2.3912659	68	28	734	0.0038147	[illegible]
33	963	1,391	0.0692307	2.4604959	69	0	732	0.0000000	[illegible]
34	692	1,452	[illegible]	2.5081539	70	28	606	0.0046205	3.1559858
35	944	1,453	0.0649690	2.5731220	71	0	617	0.0000000	3.1559858
36	544	1,507	0.0360982	2.6092196	72	0	542	0.0000000	3.1559858
37	668	1,326	0.0503771	2.6595964	73	0	522	0.0000000	3.1559858
38	633	1,228	0.0515472	2.7111435	74	0	478	0.0000000	3.1559858
39	477	1,202	0.0396838	2.7508268	75	72	427	0.0168618	3.1728466
40	259	1,205	0.0214938	2.7723196	76	0	394	0.0000000	3.1728466
41	349	1,149	0.0303742	2.8026934	77	32	333	0.0096096	3.1824560
42	551	1,115	0.0494170	2.8521099	78	0	350	0.0000000	[illegible]
43	315	1,093	0.0288197	2.8809290	79	0	321	0.0000000	[illegible]
44	407	1,095	0.0371689	2.9180975	80	0	232	0.0000000	[illegible]
45	346	1,058	0.0327032	2.9507999	81	0	224	0.0000000	3.1824560
46	170	1,070	0.0158878	2.9666872	82	0	204	0.0000000	3.1824560
47	208	1,077	0.0193129	2.9860001	83	0	185	0.0000000	3.1824560
48	61	1,079	0.0056534	2.9916525	84	0	160	0.0000000	3.1824560

NOTE: Table estimates of the number of male first admissions by age were obtained from the 1979 survey of inmates of State prisons. Also, because the sample on which the prevalence estimate is based happened not to contain persons of certain ages, some ages show no admissions for the first time. This does not mean that people at these ages have no chance of imprisonment. Also, U.S. population estimates are from U.S. Bureau of the Census, Current Population Reports, Series P-25, No. 917, Preliminary Estimates of the Population of the United States, by Age, Sex, and Race: 1970 to 1981, U.S. Government Printing Office, Washington, D.C., 1982, Table 1, pp. 11-12. Lastly, the total estimated number admitted for the first time in their lives is 59,313. Detail may not add to this total because of rounding.

USGPO, March 1976; Profile of State Prison Inmates: Sociodemographic Findings from the 1974 Survey of Inmates of State Correctional Facilities, U.S. Dept. of Justice, National Criminal Justice Information and Statistics Service, Washington: USGPO, August 1979; and, Survey of Inmates of State Correctional Facilities and Census of State Adult Correctional Facilities, 1974 (ICPSR 7811), U.S. Dept. of Justice, BJS, Ann Arbor, MI: Inter-university Consortium for Political and Social Research (ICPSR), Fall 1982.

[7] Technical documentation for the 1979 survey is contained in Survey of Inmates of State Correctional Facilities, 1979 (ICPSR 7856), U.S. Dept. of Justice, BJS, Ann Arbor, MI: ICPSR, Fall 1981.

[8] The scope of the inmate surveys is inmates of adult State prisons, which encompasses all persons held in custody under the jurisdiction of State correctional authorities. The scope is further defined as inmates serving sentences longer than a year, since most inmates of adult State prisons receive such sentences. It includes not only those inmates detained in facilities directly administered by State correctional authorities (e.g., maximum security prisons, adult reformatories, community reception centers, work-release centers, prison or road camps, reception or pre-release centers) but also those in any public or private institution charged with the custody of persons under the jurisdiction of State correctional authorities. Examples of the latter arrangement are inmates committed to State mental hospitals and inmates housed in YMCA's while assigned to work-release programs. The expression "adult State prisons," as used throughout this study, thus refers to a wide variety of facilities used by the States to confine inmates.

[9] The race designation "other," as used in this study, does not refer to Hispanics. Inmate census and inmate survey procedures call for Hispanic whites to be designated "white" and Hispanic blacks to be designated "black."

[10] Concerning equality in justice administration, two major studies that use BJS data to address the subject are M. Hindelang, "Race and Involvement in Common Law Personal Crimes," American Sociological Review, 43 (Feb.), 1978: 93-109; and A. Blumstein, "On the Racial Disproportionality of United States' Prison Populations," J. of Criminal Law and Criminology, 73 (3), 1982: 1259-1281.

[11] UCR Index crimes are the serious crimes selected by the FBI for measurement purposes and tabulated annually in its Uniform Crime Reports. Index violent crimes are murder, forcible rape, robbery, and aggravated assault. Index property crimes are burglary, larceny-theft, motor vehicle theft, and (beginning in 1979) arson.

[12] In this section of the study, dealing with State prison populations on a single day, an inmate was counted as being in prison whether or not he or she was serving a sentence. Available data indicate that, on any given day, approximately 2% of all State prison inmates are not sentenced. They are mainly drug addicts committed for treatment under civil narcotics or dangerous drug statutes in lieu of being sentenced, persons committed for study and observation prior to sentencing, individuals awaiting trial or release on bail, or detainees being held for other authorities. Inmates of Federal prisons, military stockades, local jails, or juvenile institutions are not included in any of the prevalence statistics presented in the study.

[13] Some of the States submitting annual population counts classify as "race not known" all inmates who are neither white nor black. The conclusion that other males have a slightly lower prevalence rate than white males is therefore suspect.

[14] The estimate, with its 95% confidence interval, is 3.55% (±.157). The estimate is formed by dividing the survey's estimated 68,134 black males in their twenties (estimated from a sample of 2,312 such black males) by the Nation's 1974 total estimated 1,927,000 black males in their twenties.

[15] The estimate, with its 95% confidence interval, is 3.827% (±.141). The estimate is formed by dividing the survey estimated 72,882 black males in their twenties (estimated from a sample of 2,484 such black males) by the Nation's 1979 total estimated 2,497,000 black males in their twenties.

[16] The previous section dealt with both sentenced and unsentenced inmates of adult State prisons. This section pertains to sentenced inmates only.

[17] BJS Prisoners in 1984, Bulletin NCJ-97118, April 1985, table 2.

[18] Theoretically, estimates of lifetime prevalence computed in this way can range from a low of 0% to a high of over 100%. Practically speaking, neither limit is possible. An estimate of 0% would only occur if, in a year's time, no one in the United States were admitted to prisons for the first time in their lives. An estimate over 100% would only occur if imprisonment rates in the United States suddenly become far higher than they have ever been.

[19] In the United States a person below the age of 18 can be sentenced in an adult State court to an adult State prison. Although in most States a person does not become an adult in the eyes of the law until age 18, in some States the age jurisdiction of adult courts is below 18. Moreover, in most States statutory waiver provisions exist that permit or even require the case of a young person (such as a 13-year-old) charged with a very serious crime to be prosecuted in an adult court. In some of these States a juvenile convicted and sentenced to prison as an adult will be sent to an adult prison; in other States such juveniles will begin their sentences in a juvenile facility.

[20] It might be thought that the ideal research design for investigating the lifetime prevalence of imprisonment is the longitudinal study involving a follow-up of a cohort of individuals born in a particular year (say 1920). The cumulative percentage of imprisonment up to the present, 1984, could then be obtained for these people by adding the numbers first imprisoned at age 13 (in 1933), age 14 (in 1934), etc. up to age 64 (in 1984). Longitudinal studies may be quite valuable, particularly for causal analyses, but they may not be the ideal design in all respects. Suppose one did estimate prevalence by following a cohort born in 1920. What would one have? An estimate for a cohort born in 1920, now 64 years old—a long wait for a datum that may refer mainly to historical conditions long past. At any rate, the data do not exist to calculate cumulative prevalence from such a longitudinal study. An approximation to this calculation can be achieved by adding up first imprisonments in one particular year at different ages, but this will give accurate figures only for lifetime prevalence under steady-state conditions. If first-time imprisonment probabilities have increased over time, this method will overestimate cumulative prevalence for those people born years ago (e.g., in 1920). The method essentially shows what the lifetime prevalence would be for people born now if

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1973 and 1979 imprisonment rates continued long into the future. A desirable feature of this method is its contemporaneity, a feature which cannot be approached by the longitudinal method, especially when the period at risk is a long one, as in the case of adult imprisonment.

[21] One reason the 1974 survey is said to underestimate the number of sentenced persons admitted in 1973 is the large discrepancy between the survey estimate (68,482) and the 1973 admissions census count (110,516). Another reason is explained as follows with an example. The 1974 inmate survey was conducted in late January 1974. Based on the survey, an estimated 184,313 males were in adult State prisons at that time, of whom a survey estimated 40,344 were sentenced males admitted to prison for the first time in their lives in the year 1973. These 40,344 males are therefore all the sentenced males who were admitted to prison for the first time in their lives in 1973 and who were still in prison at the time of the 1974 survey. They are a subset of all the sentenced males admitted for the first time in their lives in 1973, because some unknown number of such males had probably been released from prison before the time of the 1974 survey. This assumption must be reconciled with the fact that almost all the males admitted to prison in 1973 were serving sentences exceeding one year. Since the period from the time of the earliest 1973 admission (January 1973) to the time of the 1974 survey (January 1974) was no longer than a year, it might be thought that almost all the males admitted in 1973 would still have been in prison at the time of the survey. Perhaps they were. One reason for thinking they were not is that, because of widely existing statutory provisions relating to prison release (provisions concerning parole eligibility, good-time credit, mandatory minimum sentences, and early release due to prison overcrowding), many prisoners receiving adult State prison sentences exceeding one year actually serve less than one year before being released. In recognition of the survey's potential for underestimating 1973 admissions, the survey is said to provide an underestimate of the number of males admitted to prison for the first time in their lives in 1973. The 1974 survey estimate of the lifetime prevalence of imprisonment among males is based on the survey estimate of the number of males admitted for the first time in their lives in 1973. Consequently, the 1974 inmate survey is also said to provide an underestimate of lifetime prevalence.

[22] One reason the 1979 survey is said to underestimate the number of 1979 admissions is the large discrepancy between the survey estimate (93,517) and the 1979 admissions census count (149,741). Another reason is that the survey was conducted before the year was ended, in October 1979, and therefore could not possibly have included all the inmates admitted in 1979. A third reason is that some of the inmates admitted in 1979 were probably already released by the time of the survey. In recognition of the survey's potential for underestimating 1979 admissions, the 1979 survey is said to provide an underestimate of the number of males admitted to prison for the first time in their lives in 1979, and consequently (as explained in the preceding footnote) an underestimate of lifetime prevalence.

[23] The reason the 1973 prison admissions census is said to provide an overestimate of the number of sentenced persons admitted to adult State prisons in 1973 is further explained here. Prisoners in State and Federal Institutions on December 31, 1971, 1972, and 1973 (NPS Bulletin No. SD-NPS-PSF-1, U.S. Dept. of Justice, National Criminal Justice Information and Statistics Service, Washington: USGPO, May 1975) reports, for 1973, 105,349 (Table 6, p. 21) admissions of sentenced males to State prisons in the U.S. and 5,167 (Table 7, p. 22) admissions of sentenced females. The publication defines admissions as: commitments from court, parole or conditional release violators returned to prison, or escapees returned under an old sentence. Furthermore, the definition restricts admissions to persons sentenced as adults or youthful offenders whose maximum sentence length exceeds one year. However, in both tables cited, a footnote indicates that three States probably departed from the prescribed definition by submitting admission counts which included some persons with a maximum sentence length of less than a year and a day. Moreover, in both tables cited, a footnote reports that some inmates were involved in more than one prisoner movement, and that the published number of admissions is therefore larger than the actual number of different persons admitted. The publication gives no indication of the extent of such double-counting of people. In view of the census' potential for counting people more than once, the 1973 admissions census is said to provide an overestimate of the number of different persons admitted to prison in 1973. The 1973 admissions census estimate of the lifetime prevalence of imprisonment is based, in part, on the 1973 admissions census count. Consequently, the 1973 admissions census is also said to provide an overestimate of the lifetime prevalence of imprisonment.

[24] The reason the 1979 prison admissions census is said to provide an overestimate of the number of sentenced persons admitted to adult State prisons in 1979 is the same as the reason the 1973 prison admissions census is said to overestimate the number of persons admitted in 1973 (see preceding footnote). Prisoners in State and Federal Institutions on December 31, 1979 (NPS Bulletin No. NPS-PSF-7, NCJ-73719, U.S. Dept. of Justice, BJS, Washington: USGPO, February 1981) reports, for 1979, 141,477 (Table 11, p. 22) admissions of sentenced males and 8,264 (Table 12, p. 24) admissions of sentenced females to adult State prisons in the U.S. Some unknown number of persons admitted were counted more than once. In recognition of the admissions census' potential for double-counting people, the 1979 admission census is said to provide an overestimate of the number of different persons admitted in 1979 and consequently (as explained previously) an overestimate of the lifetime prevalence of imprisonment.

[25] The 1974 survey estimates that 62.7% of all 1973 admissions, 61.7% of all 1973 male admissions, and 82.2% of all 1973 female admissions were lifetime first sentences to adult State prisons. The 1979 survey estimates 58.3% of all 1979 admissions, 57.5% of all 1979 male admissions, and 80.4% of all 1979 female admissions were lifetime first sentences to adult State prisons.

[26] The inmate surveys actually provide various estimates that are used to calculate the lifetime prevalence of imprisonment: estimates of the total number of sentenced persons admitted to prisons for the first time in their lives, by age, race, and sex; the second time in their lives, by age, race, and sex; the third time in their lives, by age, race, and sex; and the fourth time in their lives, by age, race, and sex.

[27] The size of the constant is a function of how much larger the admissions census count is than the inmate estimate. The 1973 census count of 110,516 total admissions in 1973 is 1.6137963 times larger than the 1974 inmate survey estimate of 68,482 total admissions in 1973; the census count of 105,349 male admissions, 1.6122215 times larger than the survey estimate's 65,344 male admissions; and, the census count of 5,167 female admissions, 1.6465902 times larger than the survey estimate's 3,138 female admissions. Consequently, 1973 admissions census estimate of the lifetime prevalence of imprisonment are higher than inmate survey estimates by corresponding factors. Similarly, the 1979 census count of 149,741 total admissions is 1.6012169 times larger than the survey estimate's 93,517; of 141,477 male admissions, 1.6098702 times the survey estimate's 87,881; and, of 8,264 female admissions, 1.4598128 times larger than the survey estimate's 5,661. Consequently, 1979 admissions census estimates of the lifetime prevalence of imprisonment are higher than 1979 inmate survey estimates by corresponding factors.

[28] Multiplying survey estimates by such constants is justified if it can be assumed that the sentenced inmates who were admitted in 1973 and 1979 and who were present at the time of the 1974 and 1979 inmate surveys are representative of all the sentenced inmates admitted to State prisons in 1973 and 1979, respectively. This assumption has not been investigated.

[29] The 1974 survey questionnaire was changed slightly for the 1979 survey. It is therefore possible that some portion of the increase from 1973 to 1979 in the estimated number of first admissions may have been due to minor changes in the survey questionnaire.

[30] The possibility was explored that perhaps some substantial number of the persons admitted to prison for the first time in 1973 and designated "black" were not native-born. That possibility is of concern because including such persons with native-born blacks would artificially inflate the prevalence rate applicable to native-born blacks. To check this possibility, data from the 1974 survey on the birthplaces of inmates admitted in 1973 were examined. Only 3.9% reported a birthplace outside the United States. (Comparable data from the 1979 survey are not available.)

[31] More specifically, the annual census of prison inmates, which is based on prison records, distinguishes "race not known" from all other races in the census questionnaire. However, a substantial minority of States are known to deviate from these census definitions, either by submitting estimates (as opposed to census counts) of the racial composition of their prison populations, or by classifying as "race not known" those inmates who are Asian, Pacific Islander, American Indian, or Alaskan Native. The 1974 inmate survey, which was based on interviewer observation or prison records (about 12% of the 1974 survey sample), contained few cases of inmates whose race was not known (less than 1%); the 1979 inmate survey, which was based on prisoner self-reports only, contained none. Perhaps as a result of the censuses' potential for undercounting the other races, the annual censuses, in fact, indicate that the prevalence of imprisonment of other males is slightly lower than that of white males whereas the inmate surveys, in fact, indicate that other males have significantly higher one-day prevalence rates than white males.

[32] It is logically possible for recidivism rates computed in this way to exceed 100% as a result of either sampling error or changes in imprisonment rates over time. A longitudinal study of inmates released from prison could not have this defect. Also, inmate survey estimates are said to underestimate prevalence, partly for the reason that some of the inmates admitted in a survey year would already have been released by the time of the survey. The degree of such underestimation may be related to the ordinal sentence number. To illustrate, relatively many first-timers but very few fourth-timers admitted in 1973 would already have been released from prison as a result of early release laws. Recidivism rates computed here do not take this possible relationship into account.

[33] Among first-, second-, and third-timers, first-timers tend to have the lowest rates. D. Glaser (The Effectiveness of a Prison and Parole System, New York: Bobbs-Merrill, 1967: 27) also reported that first-timers have lower recidivism rates than second-timers or subsequent "losers." The finding of lower recidivism rates among first-timers might be expected. Since the probability of recidivism is known to increase with the length of the prior record, first-timers should have lower recidivism rates than second-timers or subsequent losers. However, differences between the recidivism rates of first-timers and subsequent losers would not be expected to increase forever because of the counter effects of aging. That is, the probability of recidivism is known to decrease with age. Since it takes time to become, say, a second-timer or a third-timer, third-timers tend to be older than second-timers who, in turn, tend to be older than first-timers. Consequently, differences between the recidivism rates of first-timers and subsequent losers would grow, but only up to a point, the point at which the effects of aging become pronounced.

[34] That is, comparable data for the period 1973 to 1979 are not available on the female population segments; the recidivism rate of white male second-timers increased significantly (at the .05 level) from 1973 to 1979, but the comparable rate for black male second-timers did not; and, the recidivism rate

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of black male third-timers declined significantly (at the .05 level) from 1973 to 1979, but the comparable rate for white males did not.

[35] This brief discussion draws attention to the difficulties arising from the assumption of steady state conditions.

[36] The procedure is a straightforward application of a statistical model known to demographers as a life table. For an excellent discussion of the model, see Chapter 15 of H.S. Shryock, J.S. Siegel, and Associates, The Methods and Materials of Demography, Volume 2, U.S. Bureau of the Census, Washington: USGPO, 1971.

[37] J. Ball, A. Ross, and A. Simpson, "Incidence and Estimated Prevalence of Recorded Delinquency in a Metropolitan Area," American Sociological Review, 29 (1), Feb. 1964; J. Belkin, A. Blumstein, and W. Glass, "Recidivism as a Feedback Process," J. of Criminal Justice, 1, 1973; R. Gordon, "An Explicit Estimation of the Prevalence of Commitment to a Training School, to Age 18, by Race and by Sex," J. of American Statistical Association, 68 (343), Sep. 1973; R. Gordon and L. Gleser, "The Estimation of the Prevalence of Delinquency," J. of Mathematical Sociology, 3, 1974; R. Gordon, "Prevalence," in Klein ed., The Juvenile Justice System, Beverly Hills: Sage Publications, 1976; D. Farrington, "The Prevalence of Convictions," British J. of Criminology, 21 (2), 1981; L. Greenfeld, "Measuring the Application and Use of Punishment," a paper presented at the American Society of Criminology meeting, Nov. 12, 1981.

[38] In the most comprehensive report to date on the accuracy of inmates' self-reports (K. Marquis, Quality of Prisoner Self-Reports, Santa Monica: Rand Corp., 1981), self-reports of arrests and convictions over a maximum two-year period prior to imprisonment were investigated by comparing them to official records. It was found that prison inmates do not deny facts about their criminal histories: their accounts included more arrests than, and as many convictions as, their official records. It was also found that the self-reports were equally "accurate" for white and nonwhite inmates.

[39] BJS Criminal Victimization in the United States, 79. A National Crime Survey Report, NCJ-76710, NCS-N-18, Washington: USGPO, September 1981.

[40] BJS Prisoners in 1984, Bulletin NCJ-97118, April 1985, table 11.

[41] Estimates of the lifetime prevalence of imprisonment in this report did not take mortality into account. However, adjustment for mortality would not have substantially affected either the size of the estimates or conclusions regarding differences between population segments compared.

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II.
SIFTING THE EVIDENCE

"The conditions that a state tolerates in its prisons have long been considered a fundamental index of the moral quality of its civilization."
Steve Lerner
Bodily Harm, Commonweal Research Institute (1986)

". . . [The] imposition of appropriate community-based controls on highly active, serious and chronic juvenile offenders does not compromise public protection."
"The Impact of Juvenile Court Sanctions" (1988)

Our Closet Institutions

A riddle of large institutions is their essential invisibility to those who administer them. Often it takes an outsider's eyes to reveal their true meaning.

In the summer of 1987, a consulting team called in by the state of Maryland got ready to issue its report on conditions in the state's juvenile justice system. It would pay special attention to Maryland's two reformatories, the Montrose School and the Hickey School, both of which had long been targets of press and citizen censure. (The consultants had been brought together by the Center for the Study of Youth Policy, then a part of the University of Minnesota's Hubert Humphrey Institute, now housed at the University of Michigan's School of Social Work. Edward J. Loughran, Commissioner of the Massachusetts Department of Youth Services, was team chairman.)

State officials were understandably edgy about the pending document. They already faced a major lawsuit, instigated a year before by the University of Maryland Law Clinic, which among other things accused Montrose of "producing preventable suicides." The only remedy, insisted the plaintiffs, was to shut down the school and transfer all the children to community-based programs.

In the event, the report confirmed most of the lawsuit's allegations and discovered a few more for good measure. The authors found Maryland's justice system in disarray. They deplored as "inordinately high" the number of children (1300) who each year were deprived of *juvenile* justice and instead were diverted to the adult system.

Reproduced with permission from Out of harm's way: the emancipation of juvenile justice, by Richard J. Margolis. New York, Edna McConnell Clark Foundation, 1988. p. 21-33.

Echoing Thomas D. Eliot's complaint a century ago, the investigators noted that Maryland's Juvenile Services Administration (JSA) had become "a child welfare system" rather than "an agency which responds to juveniles who have broken the law. . . ." The JSA, they said, was locking up children who had committed either minor offenses or none at all.

The consulting team reserved its bluntest criticisms for Maryland's two reform schools, both of which were condemned as overcrowded and in poor physical condition. Montrose had become a repository for "victimized, homeless, addicted, mentally ill, educationally handicapped, developmentally disabled children." Hickey was an administrative nightmare: the staff had ceded much of its authority, "allowing youths to discipline other youths." Instead of "interacting" with the inmates, staff members fed them "psychotropic drugs" and "anti-depressive medication."

> One incident in particular alerted consultants to the problem: on the day they visited Hickey, a young man was curled in the corner of an isolation cell, sucking his thumb. He had been taken off his medication, Ritalin, to see how he would react . . . ("Report on the State of Maryland Juvenile Services Agency," Humphrey Institute Center for Youth Policy, July 1987).

Soon after the report came out, Linda Rossi, the state's new JSA director, spent a day at Montrose with Governor William Donald Schaefer, a man not known for softness on criminals. "The Governor saw plenty," Rossi recalls: "the dirt, the holes in the wall, the ugly dormitories with their narrow cots. It wasn't exactly the right kind of atmosphere for someone's developmental years."

According to Rossi, when they got back into the car, Schaefer turned to her and said, "It's awful. Can we fix it?"

"No," Rossi answered.

"Then close it," he told her. "You got three months to do it."

It took a little longer, but by year's end Montrose had been emptied and shut down.

Jim Marchel, a reform-minded entrepreneur, runs the Wasatch Youth Support Systems in Salt Lake City. His group gets money from Utah's Division of Youth Corrections to manage programs and short-term residences for delinquent children. Marchel believes that small is beautiful and big is brutal. "There's something about a large institution," he says, "that is basically, generically corrupt. Sooner or later it starts hiding its mistakes. Everything digresses to the staff's convenience."

Marchel is in a position to know. He was once director of research for the state's juvenile courts, and in 1977 a judge empowered him to investigate certain disturbing allegations that had been brought against Utah's only reformatory, the State Industrial School (known also as the Youth Development Center, or YDC). Among other things, a class-action suit initiated by parents of some of the inmates charged that the 350-bed facility was overcrowded and understaffed. The guards, they said, were unable to cope with the children; discipline was unpredictable, vacillating between total tyranny and total laxity.

"I found it was all true," Marchel recalls. "In fact, things were much worse than anyone thought. The basic problem was fear. When you put a lot of troubled kids together, lock 'em all up in one constricted place, there's no telling what will occur. In this case there weren't enough staff people to keep the peace. There never are.

"So what happened was classic: they started to depend on certain kids, the big tough ones, to enforce discipline. Those were called 'the dukers.' Their job was to beat up kids for the staff. A guard wouldn't have to spell it out. He'd only have to say to the duker, 'Take that guy in the closet and talk to him.' The duker would know what to do."

The closet, says Marchel, was an ingenious choice of locales. Not only did it conceal the beating, it supplied the perfect weapon. "The duker beat the kid with a board, actually with a shelf in the linen closet. When he was finished, he just put the board back and it became a harmless shelf again. Nobody would ever suspect."

There were other "incredible abuses." A teenage girl had been kept naked in a tiny isolation cell for 30 days; a boy had been made deaf from frequent beatings around the ears. Children set fire to one another, raped their cellmates, poured boiling water on their adversaries. In sum, Marchel discovered several circles of hell at the YDC, and he came to the same conclusion Dante had come to: "All hope abandon, ye who enter here!"

The staff's nervousness, meanwhile, produced wild swings in discipline. For instance, Marchel learned that certain privileged inmates "were allowed to come and go pretty much as they pleased. Some were going AWOL every week or so. Can you guess why? They were committing *burglaries* out there."

The class-action suit and the revelations it produced led in time to the near-total deinstitutionalization of Utah's juvenile justice system. In place of the old, 350-bed reformatory, the state has now built two 30-bed "secure facilities," each one designed as a kind of campus with bars. (The circles they form in no way resemble Dante's: in the center are classrooms, a library and recreation lounges; bedrooms and offices comprise an outer rim.)

Although Utah's old-style detention centers house some 100 children at any one time, most of those in state custody—between 500 and 600 youngsters each year — end up living at home or in small-group residences. As C. Ronald Stromberg reminded a Congressional committee not long ago, "The emphasis in every program is on *individualized treatment* in the least restrictive setting . . ." (Testimony to House Subcommittee on Human Resources, June 1986).

The Utah and Maryland stories are unusual only in the responses leaders made to social catastrophes largely of their states' own making. The catastrophes themselves were commonplace. Institutional torment remains endemic to the nation's juvenile justice system; it seems a curse that comes with the territory, or with the barbed wire that encircles it.

As in Utah before it saw the light, the problems nationwide often begin with too many kids and too little space. "Get tough" policies in many states have stiffened penalties and lengthened sentences, putting still greater strain on already overburdened institutions and their staffs. "The most obvious impact of the 'get tough' approach," writes NCCD's Barry Krisberg, "has been an ever upward spiraling of the length of time juveniles are incarcerated." A second consequence has been "a sharp increase in the number of incarcerated minority youths" ("Preventing and Controlling Violent Youth Crime: The State of the Art," in *Violent Juvenile Crime*, Center for the Study of Youth Policy, January 1987).

Bureau of Justice computations indicate that almost half of all imprisoned juveniles (45 percent) live in "facilities with more residents than they were designed to hold"—that is, in overcrowded prisons. The bigger the institution, the less adequate it is likely to be. In 1985, institutions with at least 100 beds accounted for only six percent of all juvenile facilities but for 36 percent of all juvenile residents (*Bulletin*, 1985).

The nation's 400-plus public juvenile detention centers, some of which bear a remarkable resemblance to conventional jails, also contribute to the misery. According to at least one study, 47 of those facilities — 13 in Florida alone — "were chronically overcrowded" in 1982. The figure is probably higher today, thanks to the "ever upward spiraling" of juvenile detention terms. Again, as the study's authors point out, "It is generally acknowledged that overcrowding is a major cause of warehousing, disciplinary problems, tensions among staff members, low staff morale, and violence among juveniles and between juveniles and staff" (Ira M. Schwartz, Gideon Fishman, Radene Rawson Hatfield, Barry A. Krisberg, Zvi Eiskovits, "Juvenile Detention: The Hidden Closets Revisited," *Justice Quarterly*, June 1987).

We know how to calculate the extent of overcrowding in reformatories and detention centers, but we have not yet learned how to compute the consequences. There are no tables of abuse, no "path analyses" of violence and its variables. Instead we continue to rely on old-fashioned story-telling, and on a few clear-voiced troubadours who venture inside our institutions and bring us back the news, much of it bad.

The Youth Law Center (YLC) is one of those useful messengers. Headquartered in San Francisco, it sees itself as "a public interest law office dedicated to the protection of the rights of minors nationwide" — a role that takes staff members into places darker and more remote than any the rest of us might be inclined to explore. Here are a few of their findings, as reported by Mark I. Soler, the organization's executive director, to a Congressional committee in Washington.

> We have seen children hogtied in state juvenile training schools in Florida — wrists handcuffed, then placed stomach down on the floor and wrists and ankles joined together behind their backs.
>
> In the training school in Oregon children were put in filthy, roach-infested isolation cells for weeks at a time. In the Idaho training school, children were punished by being put in strait-jackets, and being hung, upside down, by their ankles.
>
> We have seen children in an Arizona juvenile detention center tied hand and foot to their beds, and a Washington state facility in which two children were held for days at a time in a cell with only 25 square feet of floor space.
>
> My colleagues and I have represented a 15-year-old girl, ordered into an Ohio jail for five days for running away from home, who was raped by a deputy jailer; children held in an Idaho jail where a 17-year-old was incarcerated for not paying $73 in traffic fines, then was beaten to death over a 14-hour period by other inmates; and parents in Kentucky and California whose children committed suicide in jail.

Soler has described one of those suicides, which occurred on February 14, 1986, at the San Francisco Youth Guidance Center, a detention facility:

> . . . A 17-year-old boy named Robert committed suicide by hanging himself with a noose fashioned from a sweatshirt. He had been in the facility 30 days. More than two weeks before the boy's death, social workers at the facility became aware that Robert was having "bizarre" thoughts, and referred the matter to the staff psychiatrist. The psychiatrist never saw him.
>
> . . . On February 13, Robert was put in his cell for disrupting the breakfast meal. He was confined there all day, overnight, and during the morning of the 14th. After lunch, he banged on his door for

> several minutes, calling for the senior counselor to ask how long he would have to stay in his room. The senior counselor was busy and never talked with Robert. Between ten and twenty minutes later, another counselor found Robert hanging from the wall.
>
> The tragedy did not end there. Five days later Robert's cell had not yet been cleaned up of bodily wastes, so a staff member selected two boys in the facility, ages 12 and 14, to clean up the room. The odor was so intense that the staff member covered his face with a bandanna and the two boys plugged their nostrils with cotton . . . (Testimony before the House Select Committee on Children, Youth and Families, Sept. 25, 1986).

Dramatic as they are, Soler's examples appear all too representative of our closet institutions. The Youth Law Center's docket of lawsuits is replete with institutional crimes committed against children in the name of their salvation. Reading these cases, one reluctantly concludes that in too many states the strongest incentive for deinstitutionalization has been litigation. For what the lawsuits frequently reveal is a corrections system frozen in time and philosophy, one helpless to correct itself voluntarily.

Consider Oregon's MacLaren School for Boys, the state's maximum security institution for delinquent children. In 1984, the Youth Law Center challenged "the conditions of confinement and the adequacy of treatment programs" for inmates there. A U.S. District Court judge subsequently ruled that the reformatory's isolation practices were unconstitutional. According to a YLC case summary, the judge "found that an excessive number of juveniles were placed in isolation for unnecessarily long periods." He also ruled that "inmates in the isolation units . . . suffered from unsanitary living conditions, inadequate heat and ventilation, punitive disciplinary measures, poor diet, and an absence of educational and recreational programming."

Consider, too, the detention center in Walla Walla, Washington, where children had been stuffed for 24 hours a day into cramped, rat-infested cells. Such confinements ceased only after local officials were brought to federal trial in a civil action. At the trial, experts in child psychiatry, adolescent medicine, and environmental engineering and architecture all testified to the grave damage conditions at the facility could cause incarcerated children.

The picture one gets from such reports, especially from those concerning reformatories in our Western states, is of an oddly Victorian mind-set that is somehow reluctant to enter the modern era. Plain old institutional stubbornness may be one of the reasons; a genuine belief in the efficacy of "get tough" measures is certainly another.

The morality that characterized training schools in the nineteenth century — the reverence for punitive discipline, the preference for humiliating remedies — endures as today's *modus vivendi* in places like MacLaren and Walla Walla. And its partisans remain as certain in their beliefs as were their doctrinal forebears a century ago.

But now there is a difference: today's disciplinists hold to such opinions in the face of a cumulative reality that attests to their failure, a reality the Lymanites could not have predicted. For nothing has occurred across the generations to support a conclusion that reform schools work, or that getting tough with delinquents will either reduce recidivism or safeguard society. To this day, as Krisberg emphasizes, "we possess no compelling evidence that either enhanced prosecution or stiffer penalties can prevent or control violent and serious youth crime." Indeed, "the research indicates that . . . traditional large congregate training schools cannot cure and may actually worsen the problems of youth violence" (January 1987).

On the other hand, there is new evidence to suggest that carefully diversified, community-based programs can in fact contribute both to a child's rehabilitation and to the public's safety. True, the documentation remains skimpy, and sometimes equivocal, but the emergent message seems clear enough — and it is hopeful. What follow are selected highlights from some of those recent research efforts.

The Quantification of Hope

From the diversifiers' point of view, the quest for scientific legitimacy began on a disheartening note. In 1975, only three years after Massachusetts had shut down its training schools, Lloyd Ohlin and his co-researchers at Harvard University's Center for Criminal Justice issued preliminary findings from a massive, $400,000 study-in-progress. The study, which focused on recidivism in Massachusetts, compared two juvenile groups: one group had spent time in reformatories; the other had gone through new community-based programs.

For diversifiers anxiously awaiting the results, it stood to reason that the "alternative" group, the one that had been exposed to the advantages of deinstitutionalization, would show a lower rate of recidivism. It didn't. As *Corrections Magazine* noted at the time, "The latest Harvard report . . . indicates that the overall recidivism rate for the new system . . . is about the same as it was under the old system . . ." ("Harvard Recidivism Study," November/December 1975).

Ohlin's "washout" tabulations added several new wrinkles to the ongoing debate between the Millerites and the Lymanites. For the many who subscribed to neither theory, it became accepted wisdom to invoke a plague on both houses. Indeed, the most conspicuous banner of the period bore the most discouraging of legends: "Nothing works." The deinstitutionalists offered an interesting rebuttal. The fault, they said, was not in the programs but in the study. "Nothing works" was thus revised to read, "Nothing in the research works."

As it happened, the deinstitutionalists had a point. Ohlin and his two colleagues, Robert Coates and Alden Miller, had themselves warned that their findings were "subject to misinterpretation," and they had told a writer for *Corrections Magazine* that the figures "are not as discouraging as they seem on the surface."

For one thing, they said, there were sharp differences in comparative recidivism rates among the state's seven regions. Region II in particular (the Worcester area) showed impressive reductions among boys who had been through community-based programs. Within a year after discharge, only 43 percent got into trouble again (as measured by court-ordered commitments); for juveniles who had spent time in reformatories, the comparable recidivism rate in the Worcester area was 67 percent.

The discrepancies among regions seemed to imply a more fundamental discrepancy. Could it be that the alternative programs themselves varied in ways that might profoundly affect recidivism rates? Perhaps it wasn't enough simply to assess "deinstitutionalization" and its generalized impact. Perhaps those diversified programs had to be examined one by one.

Ohlin, who seemed as disappointed as anyone with the preliminary results of his labors, cited yet another glitch: the earlier, or reform-school, group had been studied during a period of economic prosperity, whereas the later, community-based group had been studied in a time of high unemployment. In consequence, Ohlin said, there was "a heavy increase in crime, especially among juveniles. The pressures that would produce higher crime would also increase recidivism" (*Corrections,* November/December 1975).

Finally, a growing number of diversifiers began to question the very ways that researchers defined and measured recidivism. After all, there seemed little agreement among social scientists. The Harvard study identified as key variables a juvenile's court reappearances or convictions; some other studies focused on rearrests.

More troubling still, the extent of recidivism as it pertained to any particular juvenile was not being measured at all; it was simply being identified on an either-or basis — something like pregnancy — rather than calculated on a continuum. Nobody was making distinctions between, say, one arrest or 100, or even between misdemeanors and felonies. The upshot, said critics, was an abundance of black-and-white findings and a shortage of grays. No one could tell from the research whether a youth discharged from a community-based program got arrested fewer times or committed less violent types of crimes than a youth who'd graduated from a reform school. Not surprisingly, the word "simplistic" was much in vogue back then among the deinstitutionalists.

The Harvard scholars' own final words on the subject were published in 1985 in a book called *Delinquency and Community* (Miller and Ohlin, Sage Publications). Once again they examined the data, and once again the message was mixed. On the one hand, "we discover that recidivism statewide was higher after the reform than before." On the other, recidivism was markedly lower in "the regions that pursued the reforms most aggressively" — that is, wherever officials strove to provide "a large number of diverse program options, so that the special needs of each youth could be more nearly met."

In short, the greater the choices, the happier the consequences. Miller and Ohlin shrewdly underscored the point by turning it upside-down. It was no accident, they said, that the one region to have "hardly changed at all from the traditional approach" (Region V) was also the one to have shown "an exceptionally large increase" in recidivism.

Thanks to Harvard's pioneering effort, subsequent research on the effects of diversification have grown more sophisticated in their methodology and, for that very reason, more encouraging in their results. We shall focus our discussion here on two of those undertakings—a study of delinquents in Illinois, conducted by Charles Murray and Louis Cox (*Beyond Probation*, Sage, 1979), and a recent NCCD study of Utah's juvenile justice system, called "The Impact of Juvenile Court Sanctions: A Court that Works" (1988). In addition, a quick preview of a new study conducted by NCCD in Massachusetts will bring the story up-to-date.

Like Ohlin and his associates, Murray and Cox compared recidivism rates for deinstitutional clients with rates for delinquents who had been placed in more conventional settings, either in reformatories or on probation. But unlike their predecessors, the Illinois researchers differentiated among alternative programs. For instance, such programs could be weak or intensive, disorganized or well managed.

As it happened, Murray was a traditionalist, and from his data he extracted evidence that supported his beliefs. But many readers came to a different conclusion. In the view of deinstitutionalists, the study's helpful distinctions among programs seemed to yield findings that favored alternative approaches over conventional ones.

To borrow from Krisberg's later summary of the Illinois study (January 1987), "Murray and Cox reported large declines in the rate of offending for youth placed in *well-managed and intensive* community-based programs" (italics added). He goes on to note that "The successful community-based models . . . were less costly than traditional incarceration and permitted youths to better maintain their family ties."

The task of transforming young criminals into young productive citizens turned out to be tougher and more complicated than anyone had suspected. There were no "quick fixes." The key to it all seemed to be exhaustive care, or what Krisberg has called "sufficiently intensive interventions." The programs that worked best, according to Murray and Cox, were those that brandished both the carrot and the stick. As they explained it:

> We suggest that recidivism was reduced for the simplest reasons of all: Society credibly changed the short-term payoffs of delinquency. Society did what was necessary to get delinquents' attention and gave them some good reasons why they should not do these things anymore. Some of these reasons were negative — "You can't do that anymore, because some very unpleasant things will happen if you do." Some reasons were positive — "You shouldn't do that anymore, because you have better options."

In the last analysis, then, Murray and Cox's study gave deinstitutionalists something to cheer about. Not only did its numbers seem more heartening than Harvard's, its methods seemed more discriminating. By zeroing in on individual programs, the Illinois researchers were able to avoid some of the pitfalls of Ohlin's more generalized approach, and thus to elicit totals that dramatically accented the uses of diversification.

NCCD's recent research efforts in Utah and Massachusetts have refined the quantification process still further. Although the Utah study's complicated design doesn't help the lay reader, both its resourcefulness and its auspicious findings merit close attention.

The Utah study's chief contribution to deinstitutional reform resides in the ways it measures recidivism, treating it less as a single on-and-off light switch than as a multi-power rheostat ranging from dim to glaring. To use the language of the NCCD report, the study "focused not on the absolute cessation of delinquency [a la Harvard], but rather, on the reduction in the frequency of delinquent behavior." To help them quantify those reductions, researchers used a device called "the suppression effect," a negatively expressed number that represented the extent to which juvenile crime was diminished. The higher the suppression effect, the lower the recidivism.

The designers of the study did not make things easy for themselves (or for us). They chose to follow the juvenile crime careers of no less than six different groups. In three groups the youths had committed only minor offenses before embarking upon various types of court-mandated probation paths. The remaining three categories were reserved for the heavy hitters, that is, "for youth with extensive criminal histories of repetitive and serious property crimes, numerous probation placements and violent behavior."

The study labelled this second category of offenders the "Youth Corrections" group, because their crimes landed them in the custody of the state's Division of Youth Corrections (DYC). The DYC could respond in any of three ways: it could lock up the offender in a "secure facility"; it could enroll him or her in a community-based program; or, in the more perplexing cases, it could send the youth to a diagnostic center.

Whatever the choice, as the report points out, "these youth received much more intensive supervision and control than probationers." Upon paroled release, moreover, the secure facility inmates almost invariably found themselves in post-discharge, community-based programs.

The before-and-after results of all this, as summarized by the NCCD report, seem cause for hope: "Although a large proportion of Youth Corrections offenders continued to be arrested, there were *large declines* in the rate of offending for all three Youth Corrections . . . categories" (italics added). The report continues:

> The 247 Youth Corrections offenders . . . accounted for 1,765 arrests in the 12 months previous to their commitment to the [DYC]. Once released into the community, these same youth accumulated 593 new arrests. . . .
>
> If one considers the total number of charges involved in these arrests, the results are even more impressive. These . . . youth were charged with 3,215 offenses in the year prior to their court adjudications, as compared to 884 offenses in the post-adjudication period.

Overall, the Youth Corrections group's "suppression effects" were calculated at minus 66 percent for "number of arrests" and at minus 72 percent for "number of offenses." The totals proved conspicuously superior to those of the probationers, who registered reductions of 33 and 44 percent, respectively.

The crimes committed by the Youth Corrections group in their post-custody period, moreover, tended to be less serious than those for which they had originally been arrested. For example, only six percent of those youths deemed most dangerous to society — i.e., the ones whom the state had locked up in secure facilities — were subsequently charged with commissions of violent crimes.

Given the findings, it seems hard to deny NCCD's modest conclusion, namely, that "the imposition of appropriate community-based controls on highly active, serious and chronic juvenile offenders does not compromise public protection." As the researchers concede, society might have been still safer if the juveniles partaking of community-based programs had simply been locked up for the duration of the study-period. However:

> While this argument is correct in the abstract, in practice it would have required massive additional expenditures for capital construction and for the operations budget of Youth Corrections. Considering that the vast majority of subsequent offenses committed by the Youth Corrections offenders were minor property crimes, these extravagant public expenditures do not seem warranted.

Finally, the study suggests that short periods of confinement in secure facilities are at least as effective as long periods. That, too, is good news for the budget-watchers, because lockups of all kinds—whether they are called secure facilities, detention centers or training schools—generally cost more to maintain and administer than do community-based programs. In Utah, the difference per resident can run as high as $10,000 a year.

Preliminary results of NCCD's Massachusetts study appear to confirm the Utah findings. The researchers note "a large drop in the incidence of recidivism" among all juveniles exposed to diversified care by the Department of Youth Services (DYS). The declines are immediate and are "sustained throughout the entire [four-year] follow-up period."

More telling, the Massachusetts study indicates that diversification, far from jeopardizing the public's safety, may actually reenforce it. NCCD investigators observed a marked decline in the *severity* of offenses committed by DYS children, "particularly for the violent offenders."

Here, as in Utah, we have a straightforward answer to those who automatically equate reformatories with citizen protection and community-based programs with citizen peril. The Massachusetts findings imply just the opposite. They suggest that in the right circumstances, diversification begets less danger. In short, the public may have more to fear from delinquents who have been subjected to traditional forms of punishment than it does from those who have been deinstitutionalized.

To sum up, then: researchers have come a long way in a relatively short time. Indeed, between the Harvard study and the NCCD studies lie quite a few shattered illusions, including the following: that all deinstitutional programs are similarly effective; that diversification can instantly transform delinquents into law-abiding citizens; that recidivism must be viewed as an absolute standard rather than as a relative measure of programmatic merit; and, at bottom, that empirical arithmetic can provide fool-proof answers to questions that have vexed and perplexed us for the greater part of two centuries.

On the other hand, amid all the detritus—perhaps *because* of all the detritus—it is possible to detect a number of enduring achievements, not least, a solid and expanding core of evidence that diversification actually works: that it offers a humane alternative to reformatories and detention centers; that even in the short run it costs no more, and sometimes less, than brutality; that it protects the public day-to-day and ultimately reduces the threat of violent crime; and, withal, that it is a social movement still struggling, still experimenting, still pursuing the right blend of care, solicitude, diligence, and intensity.

For such are the distinctive qualities, the virtual emblems, of the modern deinstitutional process. In one admixture or another, they can be found in all of the programs we are about to glimpse.

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Making Confinement Decisions

Edwin W. Zedlewski

Today's criminal justice system is in a state of crisis over prison crowding. Even though national prison capacity has expanded, it has not kept pace with demands. While capacity in State prisons grew from an estimated 243,500 bedspaces in 1978 to 424,000 bedspaces by 1985, State prison populations swelled from 270,025 to 463,378 inmates, according to a Department of Justice survey. Expenditures by State correctional systems exceeded $8 billion annually.

Recent legislative changes to penal codes in the form of mandatory prison terms for drunk drivers and for those who commit gun crimes, plus calls for the abolition of parole boards, indicate a popular sentiment for more prison space. Yet some professionals resist, arguing that prison construction is too expensive and contributes little to the reduction of crime. As one task force concluded,

> Recognizing that prison accommodation is an expensive and scarce State resource, the Task Force is appalled that use of this resource is often shortsighted and even self-defeating of general public safety goals. Millions are spent annually to incarcerate prisoners in overcrowded

From the Director

There is understandable concern about crowding in our Nation's prisons. Courts have intervened in 36 States to order corrections systems to relieve crowding and improve conditions. Although States have expanded prison capacity and increased spending for corrections, States will still need to add an estimated 1,000 additional bedspaces each week if current rates of growth continue.

Given today's fiscal pressures and soaring construction costs, policymakers face difficult choices. They must either build more prisons or let most convicted offenders go back to our communities.

Building more prisons is costly. But not expanding capacity also has expensive consequences. Typically, the debate over prison crowding has looked only at the first and most visible part of this equation. The costs of constructing and operating prisons are easy to tally and therefore frequently put forth in discussions about prison crowding.

The true costs of *not building* are more difficult to quantify. There are scattered findings on losses due to crime and outlays for criminal justice, but it is impossible to put a price tag on victim harm and fear of crime.

A better understanding of not only the costs but the benefits society gains when criminals are incarcerated is needed to help decisionmakers weigh choices in this difficult policy area. Dr. Edwin Zedlewski, an economist on the staff of the National Institute of Justice, has drawn together and compared data on both sides of the question. His informative analysis is presented in this *Research in Brief*.

Dr. Zedlewski's findings suggest that arguments that confinement is too expensive may not be valid when weighed against the value of crimes prevented through incapacitation and crimes deterred by the threat of imprisonment.

Hardened, habitual criminals can be one-person crime waves. An NIJ-sponsored survey of inmates in three States showed they averaged between 187 and 287 crimes per year, exclusive of drug deals. Ten percent of the inmates in this group *each* committed more than 600 crimes annually.

This *Brief* tallies the costs—direct and indirect—of this level of crime to society, weighs that against the costs of confinement, and concludes that proper use of correctional facilities can save communities money by averting a variety of costs imposed by crime.

When we consider the problem of prison overcrowding, we must also consider crime victims. We must balance the half million inmates against the nearly 40 million crimes committed each year. If we continue to focus our concern primarily on prison crowding without acknowledging the necessary function prisons perform by incapacitating the violent predators and deterring those who might otherwise commit serious crimes, we do a disservice to victims and undermine public confidence in our system of justice.

James K. Stewart
Director
National Institute of Justice

> and dehumanizing conditions that are more likely to produce repeat-offenders instead of responsible members of society.

Some 11.5 million persons were arrested in 1984, about 2.4 million for FBI Index crimes. The fact that there were only 180,418 new admissions to prison that year underscores our reluctance to incarcerate. Do we need more prisons or more alternatives to prison construction? Should the expansion of prison capacity continue?

This *Research in Brief* brings together information on both the costs and benefits of punishment to examine these questions more objectively. Since so many elements of the sentencing decision—such as victim harm, justice, and public fear—defy quantification, any picture necessarily will be incomplete. Despite the incompleteness of the data, the conclusion of this report is that communities are paying far more by releasing repeat offenders than by expanding prison capacity.

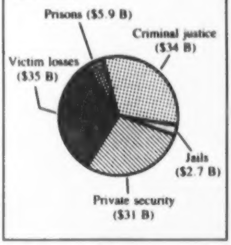
Quantifying the social cost of crime

Direct expenditures due to crime and crime prevention were approximately $100 billion in 1983. As Figure 1 shows, these expenditures were about equally divided among victim losses, private security goods and services, and operation of the criminal justice system. Prison and jail operations consumed less than 10 percent of the total bill. A key question facing policymakers is whether increasing the share allotted to confinement can reduce the total cost of crime to the public.

Taxpayers support a criminal justice system to protect themselves, their families, and their property from crime. When they vote to spend more on law enforcement, they save in other areas. There are fewer physical and financial losses. Fewer businesses and office buildings shut down because of crime threats, and fewer guards and alarm systems are needed in homes and apartment buildings.

Figure 1

National crime costs—1983 ($ billions)



Communities must eventually reach a point, however, where additional outlays to the criminal justice system are wasteful. Quadrupling outlays, for instance, would produce an abundance of police, courts, and prisons but not eradicate crime. There would still be some victims and some need for private home and business protection. The combined losses to crime plus public and private safety outlays would be greater than if the public had decided to spend substantially less on enforcement and accept a little more crime.

The trick is to balance the expenditures on safety against the benefits received. In the case of imprisonment, the costs of confining a convicted offender should be balanced against the benefits of that confinement to the community. Unfortunately, one side of the equation—confinement costs—is quite visible, while the other side—confinement benefits—is relatively invisible.

It is fairly easy to calculate a cost of one offender's year in prison; it is considerably more difficult to assess the consequences of not confining that offender for the same year. Measurement difficulties often induce people to focus on the visible elements and assume that the less visible elements do not exist. This *Brief* shows that at least a crude estimate of confinement benefits can be made, so that costs and benefits can be compared.

The computations ignore all pain and suffering of victims, fear on the part of the public, and other intangibles like justice and retribution. They focus on three pieces of information: the cost of a year in prison; the average number of crimes committed in a year by typical prison-bound criminals; and the average cost of a crime to society.

The first number estimates what society pays to sentence an offender to a year in prison. Multiplying crimes per offender times a cost per crime approximates what society pays by not sentencing that offender to confinement. The numbers are developed in the sections that follow.

Costs of a year in prison

Custodial costs for a year in a medium-security prison are about $15,000, according to the American Correctional Association. Two elements must be added to custodial costs to measure the social costs of the decision to incarcerate. They are the amortized costs of constructing the prison facility and the indirect costs incurred by removing an offender from a community.

Construction and financing costs can make building prisons seem overwhelmingly expensive when presented as a lump sum in a bond issue. When these charges are amortized over the useful life of a facility, they become quite modest. A variety of accounting techniques can be used to amortize construction costs over the life of a facility, but because the useful life of a facility is difficult to estimate, it is not obvious that complicated methods improve the accuracy of an estimate.

A simple way to estimate annualized construction costs is to compute the facility's fair rental value. Fair rental value is approximately the value of the facility and its property multiplied by the current interest rate. With construction costs for new prisons averaging about $50,000 per bedspace according to a 1984 General Accounting Office report, and using a 10-percent interest rate, a prison space (with its share of the rest of the prison structure) costs about $5,000 per year.

Imprisonment may create other, unintended costs for a community. Some offenders performed useful legitimate services before they were convicted,

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The Assistant Attorney General, Office of Justice Programs, coordinates the criminal and juvenile justice activities of the following program Offices and Bureaus: National Institute of Justice, Bureau of Justice Statistics, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.

and these services are now lost. Additionally, imprisonment of breadwinners may force their families into welfare dependency. These losses are somewhat more difficult to assess without detailed information on prisoner employment histories and family situations. Moreover, these costs might be offset by other gains within the community.

For an offender who was unemployed when convicted, for instance, a State would actually gain by paying less unemployment compensation. If imprisoning an offender means that an unemployed person replaces him in the work force, then there might also be welfare and unemployment savings. Clark Larsen estimated that society lost an average of $408 in taxes and $84 in welfare payments per year of imprisonment for a sample of burglars in Arizona. Assuming a social loss of $5,000 per year should therefore generously account for unanticipated social losses. To summarize, a year in prison implies confinement costs of roughly $20,000 and total social costs of about $25,000.

The costs of releases

Because this report is concerned with incremental changes in prison capacity, the analysis focuses on the release of borderline offenders—those offenders who would have gone to prison had space been available. The social cost of an imprisonment decision—about $25,000 per year—must be weighed against the social cost incurred by releasing these offenders. If that cost exceeds the cost of a year's confinement, then additional prison capacity is warranted. Conversely, if released offenders cause relatively little social harm, then planned expansions should be curtailed.

Release costs can be approximated, albeit crudely, by estimating the number of crimes per year an offender is likely to commit if released and multiplying that number by an estimate of the average social cost of a crime. Estimates of these two figures are developed here, despite the substantial imprecision of the results. Even though it is virtually meaningless to say that "the average criminal in the United States commits Q crimes per year" or that "the average American crime costs X dollars," the numbers help focus attention on important issues. The number of crimes averted by imprisonment and the costs associated with crime are critical determinants of how much prison space we should have.

Annual offender rates

Judges are not omniscient, nor do they sentence offenders to prison solely on the basis of criminality. Still, knowing something about the criminality of current inmates helps us assess the criminality of the borderline offenders who are released because of space limitations. On average, we would expect those released to be somewhat less criminal than those incarcerated. Our abilities to predict criminality are so limited, however, that many releasees are likely to be more criminal than some who are imprisoned.

The annual offender rates presented here came from a National Institute-sponsored survey of 2,190 inmates confined in jails and prisons in California, Michigan, and Texas. The survey was conducted by the Rand Corporation, and substantial efforts were made to validate the inmates' responses. Besides external checks of arrest and conviction records, the survey itself contained internal consistency checks that gave respondents opportunities to make contradictory statements. After discarding responses that failed consistency checks, the study estimated the annual offense rates shown in Table 1.

The table represents a *composite* of offenders rather than a *typical* offender in these State confinement systems. Individual offenders appear in each of the crime categories where they were active. When summed across appropriate categories, the study found that inmates averaged between 187 and 287 crimes per year exclusive of drug deals. (The high and low estimates of the average resulted from applying two different consistency standards to classify unreliable responses.)

Estimates so large shake our conventional beliefs about offenders until we look closely at the underlying statistics. The offense rates reported by inmates formed a highly skewed distribution with rates ranging between one and more than 1,000 offenses per year. Half of the population committed fewer than 15 crimes per year, *yet 25 percent committed more than 135 crimes per year and 10 percent committed more than 600 crimes annually.*

The averages found reflect the fact that the criminal justice system incarcerates a wide range of low-rate and high-rate offenders.

The cost of a crime

The final estimate needed to complete the cost-benefit analysis of imprisonment is the cost of a crime to society. It is the most troubling element in the exercise, partly because of the measurement problems and partly because of the difficulty in relating expenditures on crime to potential crime savings. The number obtained resulted from a review of literature on costs of crime.

Every published expenditure on crime that could be found was converted to 1983 dollars. The sum accumulated was $99.8 billion. Victimizations from the National Crime Survey were adjusted to account for victimizations of

Table 1
Inmate annual offense rates

(Varieties of Criminal Behavior, **Rand Corporation, 1982)**

Crime Committed	Prisons California	 Michigan	 Texas	Jails California	 Michigan
Robbery	90	35	12	33	25
Burglary	102	115	46	85	102
Assault	8	4	3	6	6
M veh theft	30	118	31	19	94
Misc theft	222	88	166	221	165
Forgery	78	135	40	123	111
Fraud	151	47	110	264	100
Drug deals	1,216	1,378	718	1,332	1,899

commercial firms and other office buildings. The adjusted victimizations reached 42.5 million crimes annually. Dollars were then divided by crimes, resulting in a figure of $2,300 per crime. Details of the computations are displayed in Table 2.

Despite the inherent inaccuracies in the estimation, does $2,300 per crime seem plausible? It undoubtedly overestimates the value citizens place on petty larcenies and underestimates the costs incurred in rapes, homicides, and serious assaults. Some overestimation occurs because not all criminal justice expenditures are crime-related. On the other hand, many household expenditures for items like fences and outdoor lights are uncounted, and no accounting is made of indirect costs like wage premiums paid to workers in high crime areas or unemployment and welfare expenditures created by the evacuation of businesses from high crime neighborhoods.

By combining crime costs and offense rates, we find that a typical inmate in the survey (committing 187 crimes per year) is responsible for $430,000 in crime costs. Sentencing 1,000 more offenders (similar to current inmates) to prison would obligate correctional systems to *an additional $25 million per year*. About 187,000 felonies would be averted through incapacitation of these offenders. *These crimes represent about $430 million in social costs.*

The conclusion holds even if there are large errors in the estimates. Doubling the annual cost of confinement, halving the average crimes per offender, and halving the average cost per crime would indicate that $50 million in confinement investments would avert $107 million in social costs.

Table 2
Social costs of crime

Crimes—1983* *(Millions)*		**Expenditures—1983*** *($ billions)*	
Violence	5.0	Firearms	0.3
Robbery	1.4	Guard dogs	4.2
Burglary	7.5	Victim losses	35.4
Larceny	27.4	Criminal justice	33.8
Theft	1.2	Commercial security	26.1
Total	42.5	Total	99.8
(Missing: Homicides, white collar, underground economy)		(Missing: Residential security, opportunity costs, indirect costs)	

* Personal and household victimizations are reported in *Criminal Victimizations 1983* (Bureau of Justice Statistics, 1984). Commercial victimizations were estimated by applying the 1976 (last-reported) National Crime Survey estimates to more current victimization and crime report statistics. Commercial robberies were 25 percent of personal robberies (0.25 × 1.1 million = 0.3 million), burglaries were 23 percent of (6.1 million) household burglaries = 1.4 million. Commercial larcenies were estimated at 13.7 percent of those reported to the FBI in 1983. Total larceny victimizations X = 23,637,000 + 0.137X, thus X = 27.4 million.

** Source for firearms estimate: Cambridge Reports, Inc., in *An Analysis of Public Attitudes Toward Handgun Control* (Cambridge, Mass., 1978), found that 25 percent of all households owned at least one handgun. Some 20 percent of owners said guns were purchased for protection. Gun costs estimated at $75 per year for 5 percent of 83.1 million households.

Sources for watchdog estimates: The 1976 National Election Study, G. Gerber et al., *Violence Profile No. 9: Trends in Network Drama and Viewer Conceptions of Social Reality 1967–1977* (Philadelphia, University of Pennsylvania, 1978) found 10 percent of households said they bought dogs for protection. Costs estimated at $500 per year for food, housing, and health care for 10 percent of 83.1 million households.

Victim losses estimated at $10.9 billion for property and medical in 1981 in *The Economic Cost of Crime to Victims*, Special Report (Bureau of Justice Statistics, 1984). Commercial losses taken from American Management Association (1975) study cited in W. Cunningham and T.H. Taylor, *Crime and Protection in America*, final report to the National Institute of Justice, grant number 80-IJ-CX-0080. All costs inflated by consumer price index to 1983 dollars.

Sources for criminal justice expenditures: Preliminary estimates for total system expenditure in 1981 from U.S. Department of Commerce, Bureau of the Census.

Commercial security expenditures estimated at $21.7 billion in 1980 dollars by Cunningham and Taylor, cited above.

Deterrence

Substantial crime savings may also be created through deterrence. The key instruments of deterrence are the certainty and severity of punishment. Deterrence saves crimes when potential offenders, considering the risks and severity of punishment, decide to commit fewer crimes. Logically, the number of people willing to commit crimes decreases as the danger of punishment increases.

Researchers, in attempting to assess the savings generated by increases in certainty and severity, have used a variety of indicators. The most commonly used indicator has been the probability of arrest (arrests divided by comparable crimes), largely because of the availability of reasonably comparable arrest information across the United States.

Other indicators studied include the probability of conviction (convictions divided by crimes or arrests) and the probability of imprisonment (admissions or inmates divided by crimes). Severity has typically been measured by the average time served in prison for a specified class of crimes. National trends in imprisonment risk are shown in relation to crime trends in Figure 2.

Estimates of the savings attributable to punishment risk have varied with the data used and the crimes and sanctions studied. Isaac Ehrlich, using State-aggregated data from 1960, estimated that a 1-percent increase in imprisonment risk (prisoners per crime) would produce a 1-percent decrease in crimes per capita. Kenneth Wolpin, using a time series of punishments and crime rates in England and Wales, estimated that a 1-percent increase in imprisonment produced a 0.8-percent decrease in crime rates. If his estimates were valid for the United States today, an increase of 5,000 imprisonments in 1985 would translate into 104,000 serious crimes saved.

Wolpin also separated these savings into those created by deterrence and those created by incapacitation through imprisonment. He estimated that slightly more than half the savings were created by deterrence for both property and violent crimes.

Other studies suggest that the deterrent component is even larger. Jacqueline Cohen's review of incapacitation research uncovered a range of 2 to 25 percent estimated for incapacitation's share.

Daniel Nagin and Alfred Blumstein estimated that if the sentencing policies (in terms of risks and severity of punishment) in effect in 1970 had been changed from a 25-percent chance of prison upon conviction of a serious crime to 100 percent, and prison terms had been reduced from 2.6 years on average to 1 year, then crime rates would have been reduced by 25 percent while prison populations would have risen by 25,000 inmates.

Policy implications

Focusing only on the appealing concept of preventing crime through incapacitation underestimates the benefits of imprisonment.

The implications of this analysis are that increasing prison capacity is likely to save communities money by averting a variety of costs imposed by crime.

Since estimates of social costs were based on money spent and not costs avoided, what actual savings would be realized is open to speculation. Some savings of victim losses would surely result. Costs incurred by victims of violence are difficult to express in dollars, and even so-called property crimes have their psychological elements.

The property loss aspects of crimes are reported by the Federal Bureau of Investigation every year, however. The FBI estimated that the average loss per robbery in 1985 was $628. An average burglary cost the victim $953 and a simple larceny netted $393 on average. These estimates ignore the prevention and enforcement expenses identified earlier in this article.

One can envision other kinds of savings from declining crime rates. Householders and businessmen could divert some money from protection of goods to the purchase and production of more goods. Fewer buildings would be abandoned because of crime risks, and property values would rise. Naroff, Hellman, and Skinner, for example, estimated that a 3-percent decline in crime rates in the Boston metropolitan area would increase property values by 5 percent. Inner-city businesses would enjoy lower operating expenses due to reduced incidence of theft.

Mass transportation would be safer and more popular. William Greer estimated that New York City's crime increase from 1978 to 1982 induced 150,000 households to take taxis for local transportation rather than buses or subways. Even if the criminal justice system failed to reduce personnel by a single employee, citizens would enjoy more frequent police patrols, more rapid emergency responses, and speedier access to the courts.

Certainty and severity tradeoffs

Whether a State decides to expand its prison capacity or not, its sentencing policies implicitly decide how its prison space will be utilized by setting the terms of confinement for each kind of offense. This utilization pattern, combined with crime rates, determines the certainty of punishment, which in turn influences the level of crime savings obtained by the policies.

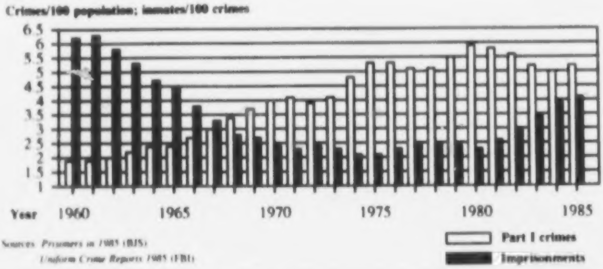
It is difficult to suggest how prison space should be used to maximize these savings, but it is likely that policies that favor long prison terms will produce different savings than policies that favor shorter terms but greater certainty of imprisonment. The deterrence literature suggests that increasing the risk of imprisonment has fairly powerful deterrent effects; the evidence on increasing sentence lengths is more ambiguous.

A deterrence-oriented policy would therefore try to increase the number of offenders sent to prison. Incapacitation policy, on the other hand, would try to maximize the number of crimes saved by those in confinement. It would try to send the most frequent offenders to prison for long periods of time.

The contrast can be illustrated by considering how each policy would allocate 1,000 bed spaces. A deterrence

Figure 2

Crime rates and prison risks: 1960–1985



Sources: *Prisoners in 1985* (BJS)
Uniform Crime Reports 1985 (FBI)

policy might increase the risk of imprisonment per crime and sentence 1,000 offenders to prison for 1 year. An incapacitation policy might increase the punishment per offender and sentence 200 offenders a year to prison for 5 years.

Both would fill the spaces available over a 5-year period. The deterrence policy would turn over the prison population annually while the incapacitation policy would take 5 years to discharge a cohort.

The effectiveness of a deterrence-oriented imprisonment policy depends on how vigorously would-be offenders react to increased risks and whether some new offenders such as juveniles will stay out of crime. The effectiveness of an incapacitation policy depends on the system's ability to identify the most frequent offenders and on the amount of deterrence lost by concentrating on frequent offenders.

If the system is weak at identifying frequent offenders and actually imprisons a random mix of frequent and infrequent offenders, then the inmate population under an incapacitation policy will resemble the population imprisoned under a deterrence policy. It will save no more crime through incapacitation and lose the crimes prevented through increased imprisonment risk under the deterrence policy.

Phillip Cook demonstrates that even if the system identifies and imprisons frequent offenders, it may still promote more crimes by reducing imprisonment risks than it gains from incapacitation.

Summary

This report has presented research findings pertinent to the question of how much prison capacity is needed in the United States today. Rather than rely on traditional but difficult to quantify desiderata of punishment such as retribution and justice, a cost-benefit perspective was used to investigate whether society spends more money punishing than it gains from punishment.

Existing data are adequate only for a crude answer to that question. Yet, the results overwhelmingly support the case for more prison capacity. Incapacitating prison-eligible offenders now crowded out by today's space constraints would likely cost communities less than they now pay in social damages and prevention.

Several factors contribute to this assessment. Prison construction costs, when amortized into a component of annual confinement costs, are small relative to general custodial costs. The criminality of today's typical inmate is surprisingly high according to Institute-sponsored research, so large numbers of crimes are averted by imprisonment. The average expenditure per crime in the United States is also quite large, so even a few crimes per year represent an important drain of society's resources from more productive uses.

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Study Guide

James K. Stewart, Director

Private Prisons

by John J. DiIulio, Jr., Princeton University

Recent Developments

The quality of life inside America's prisons and jails continues to be a major public policy issue. By some definitions, most correctional facilities are crowded; by any definition, many of them are unpleasant, violent, and unproductive. In dozens of States, all or part of the correctional system is under court order to change and improve. Where new facilities are being built, often the aim is as much to improve conditions as to increase capacity. Meanwhile, the public has been paying more and more for corrections. In 1975, expenditures by State correctional agencies totaled around $2.2 billion. In 1987, spending will be about six times that amount.

Practitioners, activists, policymakers, and scholars have been searching for ways to relieve America's ailing correctional complex. In the 1960's and early 1970's, one popular answer was to stop building secure institutions and to deinstitutionalize offenders—"Tear down the walls!" In the 1980's, amid the ongoing search for meaningful alternatives to incarceration, proposals have been made to give the private sector a significant role in the administration, finance, and construction of correctional facilities and programs—"Sell the walls!"

Moderator: James Q. Wilson, Collins Professor of Management, University of California, Los Angeles

Guests: Thomas A. Coughlin, III, New York State Department of Correctional Services
Thomas Beasley, Corrections Corporation of America
John J. DiIulio, Jr., Princeton University

Many American prisons are crowded and often provide unacceptable living conditions. Can private industry, by building and managing our prisons and by assuming a leadership role in other correctional programs, solve these problems? What ethical and policy problems are raised by proposals for privatization of corrections?

By the beginning of 1987, three States had enacted laws authorizing privately operated State correctional facilities, while more than a dozen were actively considering the option. In 1985, Corrections Corporation of America (CCA), a leader among the 20 or so firms that have entered the "prison market," made a bid to take over the entire Tennessee prison system. Though this bid was unsuccessful, CCA now operates several correctional facilities, among them a Federal Bureau of Prisons halfway house, two Immigration and Naturalization Service facilities for the detention of illegal aliens, and a 370-bed maximum-security jail in Bay County, Florida. On January 6, 1986, U.S. Corrections Corporation opened what is currently the Nation's only private State prison, a 300-bed minimum-security facility in Marion, Kentucky, for inmates who are within 3 years of meeting the parole board.

More than three dozen States now contract with private firms for at least one correctional service or program. The most frequent contracts involve medical and mental health services, community treatment centers, construction, remedial education, drug treatment, college courses, staff training, vocational training, and counseling.

The paramount question in the debate over the privatization of corrections is not whether private firms can succeed where public agencies have ostensibly faltered, but whether the privatization movement can last.

Many observers believe that the movement, though only 6 or 7 years old, is already running out of steam. They point to such things as the failure of CCA to win control of the Tennessee system, Pennsylvania's 1-year statutory moratorium on privatization initiatives, enacted in 1986, and the fact that private prison operations have not advanced much beyond the proposal stage in most jurisdictions.

Other observers, however, see privatization as a response to three main factors—soaring inmate populations and

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correctional caseloads, escalating costs, and the widespread perception that public corrections bureaucracies have failed to handle convicted criminals in ways that achieve public protection, deterrence, just punishment, and humane, cost-effective rehabilitation.

Major Issues and Controversies

At least three sets of questions need to be considered about the privatization of corrections.

1. Can private corrections firms outperform public corrections agencies? Can they produce and deliver more and better for less? What present and potential costs and benefits, if any, are associated with the private administration, construction, and financing of correctional institutions and programs?

2. Should the authority to administer criminal justice programs and facilities be delegated to contractually deputized private individuals and groups, or ought it to remain fully in the hands of duly constituted public authorities? What, if any, moral dilemmas are posed by private-sector involvement in these areas?

3. Does privatization present a single "either-or" bundle of policy alternatives or does it pose multiple choices?

At this stage, it is impossible to answer empirical questions about the cost effectiveness and efficiency of private correctional programs. The necessary research simply has not been done, and relevant data remain scarce. Theoretical speculations, anecdotes, and raw statistics abound, but there is as yet little dependable information to tell us if or how privatization can work, or at what human and financial cost.

Much of the discussion of the morality of privatization has centered on the profit motive of the firms involved. It is not clear, however, that the moral dilemmas posed by privatization—if, indeed, any exist—are related primarily to the fact that CCA and its counterparts are out to make money. The philosophical waters surrounding the issue are deep and muddy.

Conceptually at least, privatization is not an "either-or" issue. Corrections includes prisons and jails, probation and parole, and various community programs ranging from compulsory drug abuse treatment to fines and restitution. Most correctional programs include administrative, financial, and construction components. Any of these correctional program components may be public or private. Thus there are numerous possible permutations of private involvement in corrections, only some of which provoke substantial controversy.

The Debate

Pro. Proponents of privatization claim that it can shave anywhere from 10 to 25 percent from the Nation's correctional budget. Unlike government bureaucracies, advocates argue, private firms are freed to a degree from politics, bureaucracy, and costly union contracts. Private companies must answer to their investors and satisfy the terms of their contract with the government or risk losing it. As in any open market, the firms must compete with each other to maximize services while minimizing costs or go out of business. Thus, for example, the claim is made that private construction projects will be completed cheaply and on schedule, unlike public construction projects which often suffer costly overruns and meet with countless delays. While government agencies enjoy a virtual monopoly and need not strive to improve the quantity and quality of services, it is argued, private firms will have every incentive to economize and will be held accountable at every turn.

This program brought to you by the National Institute of Justice, James K. Stewart, Director. The series produced through a grant to the Police Foundation.

Further, privatization may engender a legislative climate more receptive to proposals to repeal laws that now limit or forbid production and sale of prison-made goods. Operators of private facilities have incentives to produce and sell inmate-made goods and might help persuade lawmakers to authorize prison industry as an effective cost-saving measure and thus to join the movement to transform prisons and jails into "factories within fences."

Finally, it is argued that private firms will be a source of technical and managerial innovations in a field in which most experts believe new methods are needed.

Con. Opponents of privatization claim that major cost cutting can be achieved only at the expense of humane treatment. Private firms, it is reasoned, have no incentive to reduce crowding (since they may be paid on a per-prisoner basis) or to foster less expensive (and to the private firm, less lucrative) alternatives to incarceration. Indeed, critics charge, since prisons have traditionally been financed through tax-exempt general obligation bonds, privatization encourages prison construction. Elected officials can pay for construction through lease arrangements that fall within government's regular appropriation process, thereby avoiding the political problems involved in raising debt ceilings or gaining voters' approval of bond issues. The firms' staffs, it is predicted, will be correctional versions of "rent-a-cops"—ill-trained, under-educated, poorly paid, and unprofessional.

In theory, concerns about staffing, compliance with correctional standards, use of force (lethal and nonlethal), strikes, fiscal accountability, and bankruptcy can be addressed through tightly drawn contracts. Opponents worry that, in practice, government regulation will prove inadequate and that the costs of regulation will more than consume any savings from privatization.

Finally, critics argue that privatization can neither minimize the liability of governmental units under Federal civil rights laws (under which most "conditions of confinement" litigation has been brought), nor relieve the government of its moral and constitutional duty to administer the criminal justice system.

The Context

Historical, political, budgetary, administrative, and philosophical dimensions of "private prisons" ought to be considered as background for the debate.

History. State, Federal, and local governments in this country have long contracted for a wide range of goods and services, from solid waste disposal and moviemaking to weapons research and transportation. Indeed, for much of the 19th century and well into the 1960's, numerous States and localities contracted for penal services. In Texas, Michigan, California, Arkansas, and many other jurisdictions, all or part of the prison system has at one time or another been privately owned and operated.

The history of private-sector involvement in corrections is unrelievedly bleak, a well-documented tale of inmate abuse and political corruption. In many instances, private contractors worked inmates to death, beat or killed them for minor rule infractions, or failed to provide them with the quantity and quality of life's necessities (food, clothing, shelter) specified in often meticulously drafted contracts.

Is this history bound to repeat itself? Could such abuses occur today beneath the eyes of a watchful, activist judiciary and vigilant media? Has the corrections profession itself grown beyond the days when such situations were tolerated? To date, no private corrections firm has been found guilty of mistreating inmates or bribing officials, and most private facilities are accredited. What, if any, institutional "checks and balances" exist to ensure that this does not change as the industry matures and becomes more powerful politically?

Politics. Much of domestic politics in this country involves competition and struggle among two or more groups which seek to influence public policy. Correctional policy, however, is often made in the context of what political scientists like to call "subgovernments"—small groups of elected officials and other individuals who make most of the decisions in a given policy area. As the late penologist and correctional practitioner Richard A. McGee observed, since the 1960's correctional policy has been affected by a larger than ever contingent of "coaches, customers, and critics," among them Federal judges. Still, the coaches are relatively few, the customers are virtually powerless, the critics are divided (liberals versus conservatives), and the institutions are normally hidden from public view (except in the immediate aftermath of a major disorder or scandal).

Will privatization perpetuate correctional subgovernments, or will it serve to break them up? If the former, is there a danger that private executives will enter into relationships with public officials that undermine the whole array of regulatory mechanisms, perhaps fostering a correctional version of the military industrial complex? If the latter, will the quality of correctional activities necessarily improve (and the costs of these activities decrease) as a result?

Budget. Correctional spending has been rising rapidly. Relative to other categories of public expenditure, however, corrections ranks close to last. Less than three-quarters of a penny of every dollar of total government spending goes into corrections. Even if CCA and the other firms were willing to run every single facet of America's correctional complex for free, it would not produce significant relief in public expenditures. In the context of public spending generally, corrections is an unpromising place to try to save money.

Nevertheless, corrections represents the fastest growing part of the budget in dozens of States and local jurisdictions. The belief that privatization can cut costs without reducing services might prove true if the "prison market" develops into something akin to what economists have called "perfect competition" (many firms, few barriers to entering the industry, prices set according to marginal costs). It might also prove true if the firms are driven to introduce money-saving technologies and managerial innovations.

Right now, however, it is not clear whether, or how, these goals will be met. Corrections, especially the administration of secure institutions, is a labor-intensive "business." Roughly three-quarters of the corrections budget goes to personnel costs. The most expensive (and difficult) correctional activity is the management of higher custody prisons, but the private firms have shown little eagerness to take a crack at running the Nation's "Atticas" and "San Quentins." Thus far, they have engaged in what critics call "creaming"—getting contracts for correctional facilities and services in which offenders are not hardcore, facilities are new or recently renovated, and profits are more predictable and easier to generate. To avoid political headaches, the firms have for the most part steered clear of jurisdictions with strong public employee unions, but it is precisely in such jurisdictions that costs are highest. There is as yet no evidence to suggest that privatization can lead to the adoption of new and better correctional programs and practices or cheaper financing arrangements.

Administration. The practices and performance of public correctional agencies vary widely. In administering prisons, some jurisdictions have relied on paramilitary structures while others have employed more complex management systems. Some field services units have adopted computer technologies, others have not. Some prisons are orderly, others are riotous. Some jails are clean, others are filthy. Some agencies offer a rich menu of work and educational opportunities, others offer few or offer them only on paper. And some departments spend much money per prisoner and perform badly while others spend less and seem to do much better.

Whatever else it may suggest, the existence of such concrete differences in correctional practices and outcomes makes it impossible to accept that public correctional bureaucracies have failed. What are the administrative and related factors associated with better public correctional facilities and programs? Only after we have studied the enormous variation in the public sector experience does it make good sense to ask whether private firms can do better (and more consistently) than government bureaucracies. From an administrative perspective, the issue is not public versus private management, but under what conditions competent, cost-effective management can be institutionalized. On this and related questions about privatization, the jury is still out.

Philosophy. In weighing the morality of private prisons, the profit motive of the privatizers may be less important than is commonly supposed. The real issue may be instead whether the authority to deprive fellow citizens of their liberty, and to coerce (even kill) them in the course of this legally mandated deprivation, ought to be delegated to private, nongovernmental entities. Inescapably, corrections involves the discretionary exercise of coercive authority.

Even if the corporations were to offer their correctional services for free (as do a small number of foundations and other groups), and even if it were a certainty that the firms could reduce costs and improve services without realizing a single fear of their opponents, would privatization be justifiable? What is the proper scope of the government's authority? Where does its responsibility begin? Where does it end? Should the government's responsibility to govern end at the prison gates, or are not imprisonment (and other forms of correctional supervision) the most significant powers that the government must exercise, on a regular basis, over a large body of citizens?[1] All other things being equal, does it matter whether the patch on the correctional officer's sleeve reads "State of Tennessee" or "Corrections Corporation of America?"

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[1] In 1986, about 1 out of every 33 adult males in America was under some form of correctional supervision.

Taken seriously, the moral issues surrounding private prisons are far and away the most interesting, challenging, and important problems the subject poses. In studying or debating this subject, we may be tempted to avoid philosophical questions entirely or (worse still!) to address them casually, to wrap them in polemics, or to "settle" them by making abrupt recourse to the name (or well-known maxim) of some famous, long-dead writers whose views appear to support our own. Let us resist.

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Discussion Questions

1. What are prisons, jails, and other correctional activities for (e.g., retribution, deterrence, public protection, rehabilitation)? Do you believe that private companies can better achieve these goals, for less money, than government can?

2. Do private prisons represent an improper—or immoral—delegation of public authority? How, if at all, might this question apply to private financing and construction of correctional facilities?

3. Suppose CCA became CJCA—"Criminal Justice Corporation of America"—providing not only excellent private correctional services but excellent private policing, prosecutorial, and judicial services as well; would that be going "too far"? Why? Why not?

4. Is it possible to conceive of recent privatization initiatives as the latest (albeit unfinished) chapter in the history of American penal reform?

5. Apart from privatization, or in addition to it, what other ways might there be to address America's correctional problems?

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TESTIMONY OF COMMISSIONER MICHAEL K. BLOCK BEFORE THE HOUSE JUDICIARY SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES AND THE ADMINISTRATION OF JUSTICE

MARCH 5, 1987

Mr. Chairman, members of the Committee, I appreciate this opportunity to appear before you today on behalf of the United States Sentencing Commission at this oversight hearing on Federal Prison Policy. Our Commission Chairman, Judge Wilkins, is necessarily in Richmond, Virginia today at an *en banc* sitting of the Fourth Circuit Court of Appeals. In view of this and the fact that I chair the Commission's Prison Impact Study, he has asked me to represent the Commission here this afternoon.

The Committee has asked the U.S. Sentencing Commission to address the complex question of the impact on correctional facilities and service occasioned by the sentencing guidelines now in the process of being developed by the Commission. Before turning to this subject, however, I would like to provide the Committee a brief status report on the sentencing guidelines now being developed by the Commission.

Since the Commissioners assumed office approximately 16 months ago, our Commission has made substantial progress toward the Commission's principal initial objective -- the development of sentencing guidelines for the Federal criminal justice system. The Commission recently published a revised draft of proposed guidelines and is now receiving public comment on them, with public hearings scheduled for next week, March 11 and 12, at the United States Court House in Washington, D.C.. Thereafter, the Commission intends to make final revisions in the guidelines and submit them to Congress by the April 13, 1987, statutory deadline. After a six-month Congressional review period, the guidelines will go into effect on November 1 of this year, unless Congress by law provides otherwise.

As an aid to the process of guideline preparation, the Commission has held a number of public hearings and solicited information from a wide variety of sources on issues relating to the development of sentencing guidelines. The topics examined in these hearings have included the ranking of criminal offenses by seriousness, the role of criminal history as an offender characteristic, organizational sanctions, sentencing options, plea negotiations and the issue of whether the Commission has the authority to promulgate guidelines that include capital punishment. Following the publication of a preliminary draft of guidelines in late September, the Commission conducted a series of six regional public hearings to further facilitate public input.

As the Commission enters the final stages of promulgating the initial sentencing guidelines, we remain mindful of the important responsibility and directive given to the Commission in section 994(g) (28 U.S.C. § 994(g)) of our enabling legislation with respect to consideration of prison impact. That provision states as follows:

> (g) The Commission in promulgating guidelines pursuant to subsection(a)(1) to meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code shall take into account the nature and capacity of the penal, correctional and other facilities and services available, and shall make recommendations concerning any change or expansion in the nature or capacity of such facilities and services that might become necessary as a result of the guidelines promulgated pursuant to the provisions of this chapter. The sentencing guidelines prescribed under this chapter shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission.

The last sentence of this subsection is construed by some as an explicit constraint on the use and duration of imprisonment under the sentencing guidelines. The Commission does not belittle the significance of this directive. However, we believe that the provision must be reasonably construed in conjunction with other provisions of the enabling legislation which contain somewhat contrary and conflicting instructions. For example, section 994(m) (28 U.S.C. § 994(m)) instructs the Commission to "insure that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense", and further states that the Commission should initially consider but "not be bound" by current "average sentences". Also, the section 994(g) language must be viewed in the context of its legislative history. In particular, the concluding sentence of this subsection, which embodies a compromise worked out with Senator Mathias, contrasts with a considerably more stringent imprisonment constraint amendment that was previously offered to and overwhelmingly rejected by the Senate.

In sum, the Commission sees this provision as a directive to ascertain, as best we can, and to carefully consider the impact of the guidelines on correctional facilities and services. The Commission may then elect to make adjustments in the guidelines before they are submitted to Congress which are prudent in view of the expected impact and consistent with the overall directive of meeting the purposes of sentencing. Finally, the Commission, pursuant to this provision, and after consultation with the Bureau of Prisons, expects to report to Congress the projected impact of the guidelines and make appropriate recommendations concerning any changes or expansion in correctional facilities or services which the Commission and the Bureau project may be necessary as a result of the sentencing guidelines.

In addition to the prison impact assessment called for under section 994(g) of its statute, the Commission is cognizant of the requirements of section 994(q), which directs the Commission and the Bureau to conduct an in-depth study of Federal correctional resources. No time frame is specified in the statute for the completion of this study and report to Congress. The nature of the required investigation and analysis suggests, however, that a longer-term study to be conducted after the initial sentencing guidelines were in place was intended. The Commission expects that the current joint undertaking with the Bureau of Prisons will provide a foundation for this future, more comprehensive resource utilization assessment.

Before describing more specifically the efforts which the Commission, in conjunction with the Bureau of Prisons, has made to assess the impact of the guidelines on prison requirements, I would be remiss if I did not first emphasize that any impact of discretionary decisions by the Sentencing Commission will be greatly overshadowed by the effects of legislation enacted by Congress that mandates specific and substantial increases in sentence length.

First, as part of the Comprehensive Crime Control Act, Congress enacted 28 U.S.C. § 994(h), which provides:

> (h) The Commission shall assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years or older and-
>
> (1) has been convicted of a felony that is--
>
> (A) a crime of violence; or
>
> (B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and section 1 of the Act of September 15, 1980 (21 U.S.C. 955a); and;
>
> (2) has previously been convicted of two or more prior felonies, each of which is--

> (A) a crime of violence; or
>
> (B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and section 1 of the Act of September 15, 1980 (21 U.S.C. 955a).

Our preliminary analysis shows that this mandate will have a major impact on prison requirements. For example, we believe that, if current sentencing practices otherwise went unchanged, this special offender provision would increase by about 75% the average time served for robbery, which alone would necessitate more than 4,500 prison cells, most of at least medium security. We expect this provision to impact prison sentences for some other crimes as well. Let me emphasize again that the substantial prison impact resulting from the implementation of this provision of the Sentencing Reform Act is essentially outside the discretion of the U.S. Sentencing Commission and reflects a policy decision of Congress.

Of even greater significance is the impact of the recently-enacted Anti-Drug Abuse Act of 1986. Congress recognized that the new high mandatory minimum sentences for drug trafficking would require more prison space. However, as the Bureau of Prisons and others have indicated, Congress has authorized and appropriated only a small fraction of the funding necessary to provide this added prison capacity.

As an example, our preliminary analysis shows that, even before considering the sentencing guidelines, the average time served by defendants convicted of selling heroin would increase by almost 150%. Given that the current prison population of such offenders is approximately 3,165, the new law would require about 4,600 new beds. Furthermore, the special offender provision would apply to many of these criminals. According to our preliminary estimates, the special offender provisions would increase average time served by another 75%, requiring another 5,700 prison spaces. Thus, even with the most bare-bones implementation of the statutory penalties, the Anti-Drug Abuse Act, coupled with the special offender provisions, could require 10,300 additional prison spaces just for offenders who are convicted of selling heroin. Of course, this increase would occur gradually over a number of years.

In developing its guidelines for drug trafficking, the Commission has endeavored to ensure not only that they implement the statutorily mandated penalties in all cases, but also that in cases where no mandatory minimum is specified, the guidelines provide sentences that are in proportion to those where minimums are mandated. Given the recent and strongly-expressed intent of Congress and the Administration to deal harshly with drug traffickers, the Commission does not feel at liberty to propose guidelines significantly lower than those contained in its recently published Revised Draft. Thus, additional prison space will be required.

Relative to the increase in prison capacity resulting from implementing the Anti-Drug Abuse Act and the special offender provision of 28 U.S.C. § 994(h), the impact of the guidelines dealing with other crimes is not likely to be very substantial.

I now turn to the Commission's consideration of prison capacity and impact, which has been ongoing for some time. Shortly after we were appointed, Commissioners held meetings with the Director of the Bureau of Prisons and other officials to discuss the level of resources that were available, and visited federal correctional facilities to obtain a better idea of their nature and the services provided. We also have obtained considerable information about the costs of operating the different types of facilities, and the costs of constructing new ones. Since the cost of imprisoning offenders at different security levels varies enormously, we realize impact analysis really does need to be done on a crime-by-crime basis.

The first phase of our actual impact analysis began with our extensive study of current sentencing practices. This study was undertaken not only for use in assessing prison impact, but also to comply with 28 U.S.C. § 994(m), which requires the Commission to ascertain average current practices for categories of cases and use those averages as a starting point in the development of guidelines, recognizing that changes may be required in order to fulfill the statutory purposes of sentencing. By using our current-practice analyses as starting points for drafting guidelines, we could have a fairly good idea of the prison impact even without doing a formal study of it.

In its early stages and even before the Commission was able to establish a research staff, we asked the Federal Judicial Center to prepare a preliminary analysis of time actually served for most categories of offenses and criminal history. That study, which was far more detailed than anything previously prepared, gave the Commission a rough of idea of the distribution of sentences as well as average sentences.

Since its formation in April of last year, our research staff has devoted a tremendous amount of attention to analyzing current sentencing practices. These analyses have been performed using large volumes of data compiled by other agencies on over 40,000 cases, as well as an augmented sample of over 10,000 cases that detailed relevant sentencing factors that are not otherwise recorded. The analyses were presented in several different formats. They helped us identify factors that should be included in the guidelines. In addition, they enabled us in many cases to assess the import of specific sentencing factors, and to determine how the treatment of those factors in the draft guidelines compared to their average treatment currently. A summary of our current-practice estimates, presented in terms of the offense level system that is used in the revised draft guidelines, is attached.

Our analysis of current practice also included having staff members review presentence investigation reports for factors that may have been missed or misinterpreted in the statistical analysis of the aggregate data. That enabled us to refine and improve our guidelines and to obtain a better, albeit general, idea of their likely impact.

In February, once the revised draft guidelines reached a workable form, it became possible for us to begin an analysis aimed directly at assessing prison impact. The prison-impact model, which are now refining, estimates capacity requirements on an offense-by-offense basis, isolates out major statutorily mandated changes, and compares the results to prison requirements under current practice. As preliminary results of that analysis for each offense become known, the Commission intends to consider them in determining whether and how to revise the guidelines.

Attached is a brief summary outline of the approach we are using to estimate prison impact. I emphasize the word estimate; we cannot predict that result with certainty. Too many things about how the system will operate are unknown; the best we can do is make reasonable and informed assumptions. We plan two make two or three sets of such assumptions and compare the results.

Although time is short, the Commission believes it is adequate to permit careful consideration of impact estimates for the crime categories which are projected to be significant users of prison capacity. Taking this responsibility seriously, the Commission intends to actively employ the results of this joint effort with the Bureau of Prisons to revise and refine the sentencing guidelines prior to their submission to Congress in mid-April.

Mr. Chairman, members of the Committee, thank you for the opportunity to address the Committee on this important subject. I would be pleased to discuss our research program with you further or answer any questions you may have.

STEPS FOR ESTIMATING THE PRISON IMPACT OF THE GUIDELINES

1. Prepare a set of application statements for the guidelines.

   Application statements explain how the data that are available to the Commission can be used to simulate the effect that the guidelines, the special offender provisions, and the new drug laws will have on sentencing practices. These application statements reflect the Commission's perspective on how the guidelines would be applied to defendants who are convicted currently in district courts.

2. Develop computer code to calculate the guideline sentence for any given case, assuming the defendant was convicted at trial.

   The computer code is a computer program that faithfully applies the application statements to that data that are available to the Commission. When developing the computer program, we assume initially that all defendants are convicted at trial of their real offense behavior. Although unrealistic, this assumption establishes a worst-case or "at risk" sentence, which can be adjusted to reflect the impact of such factors as cooperation and plea negotiations.

3. (a) Develop assumptions about the operation and effect of plea negotiations under the guidelines--what types of plea agreements will be reached and how will the sentence for a defendant who cooperates and/or pleads guilty compare to that which he would have received had he been convicted at trial?

   (b) Write computer code to estimate the sentences that will result from plea agreements under the guideline system.

   Prison impact will depend importantly on how plea agreements will affect the administration of the guidelines. The Commission's best approximations of how plea negotiations will affect sentencing under the guidelines are embodied in a computer program that is used to adjust the "at risk" sentence to a level that is more likely to occur in practice.

4. Develop estimates of the likelihood and timing of parole and probation revocation as well as violations of supervised release and the length of time served in the event of a revocation or violation.

   Parole and probation revocations have a significant effect on prison utilization. Because the sentencing guidelines are expected to affect both the rate at which defendants have supervision status revoked and the length of time that they will spend in prison as a result, it is necessary to develop a model of current practices and to simulate how current practices will be modified by guidelines. It is also necessary to forecast how violations of supervised release will affect the demand for prison space.

Develop assumptions regarding the numbers and types of cases that will be prosecuted in the future.

The impact of guidelines on the prisons depends not only on how the guidelines are applied, but also on the numbers and types of future cases that will be sentenced under the guidelines. Future cases depend on the raw number of cases presented to U.S. Attorneys and how the U.S. Attorneys decide to process those cases. Some reasonable assumptions on the flow and disposition of cases have to be developed.

Run the model on the projected stream of incoming cases, using a variety of scenarios (sets of assumptions) from the preceding steps.

No single set of assumptions is likely to be universally accepted. Therefore, it is necessary to simulate the guidelines' impact for different sets of assumptions.

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Chapter 4

THE FEDERAL ROLE IN LOCAL JAILS: FROM LAW ASSISTANCE TO LAW SUITS

In *Chapter I*, the jail was described as the quintessential local institution. Yet, as much of the foregoing text suggests, local jails, like the governments that sustain them, are touched daily by the actions (and inactions) of state legislatures, executives and judiciaries. Decisions made at the state level define criminal behavior; create sentencing structures to chastise that behavior; mandate standards for jail facilities and operations; occasionally punish or seek to alter errant institutions; and sometimes offer financial or technical assistance or both.

Nor is this merely a bilateral arrangement. The federal government also participates to a profound, if visibly lesser, degree. Indeed, the relationship between the local jail administrator and federal authorities may run very deep. The former may seek federal aid or reel under its diminishment; may request federal training and technical support; may house national prisoners; may encounter hurdles—direct and indirect—resulting from federal legislation; and may—running headlong into the national Constitution—encounter confrontation in a federal courtroom. Thus is the jail—the local institution's local institution—a creature of the intergovernmental milieu.

Just as changes have occurred in state-local correctional relations over the past decade, so have changes occurred between the federal government and the local jail. Having traditionally played a very minor role in state and local criminal justice generally and corrections in particular, the federal government, through its court system, has recently begun to shape state and local correctional policies in a most profound manner. Thus, although an aggressive judicial corrections stance is among the newest of federal interventions into the subnational criminal justice system, it is almost without question the most important. For that reason, and because "there has been no linear progression from one relationship to the next between federal policies and county jail operations,"[1] this chapter will first examine the rise in federal court orders designed to bring local institutions into compliance with the U.S. Constitution, and only later discuss earlier and coterminous federal correctional approaches carried out by the legislative and executive branches. The first section, then, will concentrate on the Constitutional approach, while succeeding sections will focus on contractual, financial and regulatory strategies respectively.

THE CONSTITUTIONAL APPROACH: JUDICIAL INTERVENTION INTO LOCAL CORRECTIONS

The impact and sheer magnitude of institutional litigation and resulting judicial actions (including not only prisons and jails but juvenile facilities and mental institutions as well) have been all the more intensely felt because such actions have been so chronologically condensed. Strong judicial involvement in jails, then, has been a relatively short-term trend, spurred on by three major legal developments—the collapse of the "hands off" doctrine, reinterpretation of Section 1983 of the *Civil Rights Act of 1871*, and the rise of the managerial judge—and one important institutional fact of life—the local jail's mixed population.

The Collapse of the "Hands Off" Doctrine

While the safeguarding of Constitutional rights is an ancient judicial function, applying those safeguards to the states through their incorporation in the 14th Amendment is relatively new, and newer still is the judicial belief that federal judges should remedy violations involving institutional inmates. Indeed, until as recently as the mid-1960s, the federal courts had consciously employed a "hands off" doctrine, refusing to decide corrections cases on their merits. Prisoners were considered legal "slaves" of the states and institutional administration a *purely* administrative function.

Ironically, the great rise in prisoner-related judicial action occurred not during the so-called "activist" Warren Court era but rather during the allegedly more conservative Burger Court years. As one observer notes:

> The Warren Court, known for its liberal decisions in the areas of civil rights and liberties generally, did little in the area of correctional reform. Interestingly, Chief Justice Burger, touted as a traditionalist who would lead a more conservative court back to the old verities by strictly construing the Constitution, has spoken out about the need to attend to the correctional process and has pushed the organized bar to assume more responsibility in this area.[2]

Currently, inmates may seek to redress grievances in federal court through a number of means: initiating civil suits against corrections officials; attempting to attain writs of mandamus against corrections officials;[3] commencing criminal prosecutions of officials acting illegally; introducing contempt citations against officials who fail to obey court orders; trying to persuade the federal courts to issue writs of habeas corpus (now becoming more restricted);[4] and the increasingly popular method of bringing suit under Section 1983 of the *Civil Rights Act of 1871*.

The Rise of Section 1983

> Like biblical lineage, the *Civil Rights Act of 1866* begat the 14th Amendment, the 14th Amendment begat the *Civil Rights Act of 1871*, the act of 1871 begat an amendment in 1875, and the amendment begat Section 1983, a seemingly simple sentence, which, in its old age, has been doing a lot of begatting itself—begatting some condemnation, some commendation and a great deal of consternation.[5]

The above quotation might well have added: "The begatting of jail litigation," for the flood of suits against jails—slower to take off than those against prisons—has been greatly abetted by recent judicial developments concerning Section 1983 of the *Civil Rights Act of 1871*. Section 1983 allows those who, by some state action, have been deprived of Constitutional or federal statutory rights, to seek legal remedy against the official "person(s)" who have violated their rights.[6] Thus, following almost a century of *under*utilization, in 1961, the Supreme Court be-

began the process of liberalizing Section 1983[7]—a process that, for our purposes, culminated in two decisions handed down in 1978 and 1980.

Those decisions held that (1) local governments themselves could be characterized as "persons" under Section 1983; (2) that not only were they liable for Constitutional violations resulting from officially adopted ordinances, regulations and decisions but also for custom and usage and official conduct not formally adopted but pervasive enough to have the force of law; (3) that localities were liable for money damages; and (4) that local jurisdictions could not employ a "good faith" defense to avoid such damages.[8] While neither of those cases involved jails, the implications were clear.

Hence, "[s]heriffs, jail administrators and managers, and jail supervisors need not be personally present or have personally violated pretrial detainees' or inmates' rights to be held liable under Section 1983."[9] Instead, inmates may be able to demonstrate that such officials were tied to the constitutional violations by proving any number of official deficiencies, including

> *Negligent Hiring*—failure to institute a hiring system which weeds out obviously inept people and which attempts to place qualified people in jobs they can competently perform;
>
> *Failure to Train*—failure to provide jail personnel with the degree of knowledge and skill necessary to perform assigned tasks competently;
>
> *Negligent Assignment*—placing of personnel in a job or situation which they are not equipped to deal with competently in instances where superiors have reason to know that such personnel are not so equipped;
>
> *Failure to Direct*—failure to provide jail personnel with written up-to-date policies and procedures to guide them appropriately in the performance of their duties.
>
> *Negligent Supervision*—failure to correct recurring problems or to guide employees' direction in situations that recur with some frequency; and
>
> *Negligent Retention*—failure to dismiss a person obviously unfit to be a jailer.[10]

Moreover, failure to correct such inadequacies as overcrowding, insufficient medical care and repeated violence can place counties and municipalities under the cloud of Section 1983 where "[t]he lack of funds to take corrective action is no defense."[11]

In 1983, a bitterly divided Court considered whether punitive damages[12] are available under Section 1983 and, if so, what underlying threshold of conduct will trigger awarding of such damages.[13] The case in question involved an inmate of a Missouri reformatory who was beaten and sexually assaulted by his cellmates. The inmate, Wade, historically had been the subject of assaults and one of his cellmates had a history of assaulting other prisoners. Wade brought suit under Section 1983 against a number of reformatory guards and other officials alleging that his Eighth Amendment rights had been violated. Thereafter, a district court jury awarded Wade both compensatory and punitive damages, an appeals court affirmed that award, and the Supreme Court upheld the appellate decision. Thus, for the first time, the Court sanctioned the availability of punitive damages under Section 1983.

The Court then considered what sort of behavior would leave an official open to punitive damages. That is, must the official in question have acted with malicious intent to cause injury or is "reckless or callous indifference to . . . federally protected rights" sufficient motivation? The Court here held that indifference was an adequate standard for allowing juries to assess punitive damages. The decision is likely to stimulate even more extensive prison and jail related litigation.

The Effects of Special Inmates

Jails, unlike adult prisons and penitentiaries, routinely house two (often overlapping) varities of inmates—pretrial detainees and juveniles—that make them particularly susceptible to federal legal action.[14] As recently as three years ago, the Supreme Court spoke to the issue of those awaiting trial. While the Court's decision against the prisoners rested on a wide-ranging deference toward the methods used by jail administrators both to insure detainees' presence at trial and to efficiently manage the jail facility, it did assert that "a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law."[15] Where the "punishment line" is crossed, is not clear. Yet, the conditions that existed at the New York detention center in question (a modern facility designed almost exclusively to hold those awaiting trial) and its alleged pretrial punishments (double-bunking, cell and cavity searches, and book restrictions) contrast sharply with conditions found in "less benevolent" facilities where pretrial detainees are housed with convicted criminals and where violence is a routine, if not daily, occurence. Thus, in March 1982, the U.S. District Court for Western Virginia held that

> It is abundantly clear that extreme overcrowding in a local jail is of greater practical effect and Constitutional consequence than in a larger institution or a common road camp. Simply stated, all overcrowding is not equal. Perhaps more importantly, the local jail houses a high percentage of pretrial detainees. . . . As a matter of common sense and fundamental fairness, the criminal justice system must insure that pretrial detainees are not housed in more deprived circumstances than those accorded to convicted persons . . . . Overcrowding in a local jail cannot be qualitatively equated with overcrowding in a state penal institution.[16]

Despite recent declines,[17] the number of children (under 18 years of age) who are incarcerated every year in adult jails and lockups is still estimated by various sources at between 100,000 and 1 million.[18] In addition to being a moral issue, the legality of juvenile detention in adult facilities is increasingly being questioned.

Because juveniles in jail are overwhelmingly pretrial detainees, their confinement in unsuitable institutions causes many of the same legal problems as the confinement of adult pretrial prisoners. Youths, however, increasingly appear to have an additional line of defense—namely, their age.

Thus, throughout the 1970s, various courts have opined that

> [detaining youths in adult jails], even though these commitments be for limited periods of time, constitutes a violation of the 14th Amendment in that it is treating for punitive purposes the juveniles as adults and yet not according them for due process purposes the rights accorded to adults.[19]

> The worst and most illegal feature of all these proceedings is in lodging the child with the general population of the jail, without his ever seeing some officer of the court.[20]

> [T]he evolving standards of decency that mark the progress of a maturing society require that a more adequate standard of care be provided for pre-trial juvenile detainees.[21]

While there has never been a definitive Supreme Court ruling on the practice of detaining children in adult jails, two important legal actions occurring in 1982 could have profound consequences.

On April 26, an Ohio county judge agreed in an out-of-court settlement to end his practice of incarcerating juveniles. In addition, the judge, along with county commissioners and the sheriff, consented to pay a total of $40,500 in damages to two 15-year olds who had been incarcerated in the county's adult facility.[22]

Even more significant, in August 1982, U.S. District Court Judge Helen Frye ruled that the practice of detaining juveniles in adult jails is "unconstitutional per se."[23]

> . . . [T]o put such a child [status offender] in jail—any jail—with its criminal stigma—constitutes punishment and is a violation of that child's due process rights under the 14th Amendment. . . . To lodge a child in an adult jail pending adjudication of criminal charges against that child is a violation of that child's due process rights under the 14th Amendment to the *United States Constitution*.[24]

According to one observer, Judge Frye's ruling "will have major impact not only in Oregon, but nationally. . . . The decision means that it is illegal to hold children in adult jails anywhere."[25]

The Emergence of the Managerial Judge

If nothing else, what have come to be known as the lower court "institution cases," ruling upon and ordering changes in state prisons, mental institutions, and, increasingly, local jails are notable for their volume. Yet, the quantity of such cases is not their most distinguishing characteristic—in the United States, the phrase, "burgeoning field of case law," is a redundancy if ever there was one. Rather, they are differentiated by an unusual degree of judicial intrusion:

> Federal district judges are increasingly acting as day-to-day managers and imple-

> mentors, reaching into the details of civic life: how prisons are run, medication is administered to the mentally ill, custody is arranged for severely deranged persons, private and public employers recruit and promote. Though judicial authority and democracy have always existed in tension, as federal judges assume a more active managerial role, politicians and citizens chafe for quite pragmatic reasons.[26]

Few would dispute the findings in most such court decisions that conditions in the institutions under order are deplorable. And with findings of unconstitutional conditions in hand, it would be extremely difficult for even a moderately compassionate jurist not to order changes. Indeed, whether in the hands of a merciful or heartless judge, findings of Constitutional violations demand changes designed to bring the offending institution into compliance with the Constitution. However, in contrast to court actions of only a decade or two ago which tended to lean toward locally-designed compliance plans and implementation with "all deliberate speed," the newer court orders are often marked by demands for immediate conformance with court-designed plans—the only alternative being that the offending jurisdiction shut down all or part of its prison system, mental institution(s), jail(s), etc.:

> Let there be no mistake in the matter: the obligation of the respondents to eliminate existing unconstitutionalities does not depend upon what the legislature may do, or upon what the governor may do, *or indeed upon what respondents may actually be able to accomplish*. If Arkansas is going to operate a penitentiary system, it is going to have to be a system that is countenanced by the Constitution of the United States.[27]

Thus, the judge of the 1970s and 1980s—the judge overseeing the era of jail litigation—has taken on the additional functions of local legislator and executive. This trend has been noted with some degree of alarm by a number of prominent legal scholars:

> Rather than preventing the government from acting in an unconstitutional way, these orders mandate affirmative action by the legislative and executive branches to correct constitutional violation. Moreover, the court orders involve a subject matter that is the very foundation of the discretion that is lodged in the other branches [as well as autonomous state governments]: the raising, allocation and spending of government funds.[28]

> [I]t is representative of the trend toward demanding performance that cannot be measured in one or two simple acts but in a whole course of conduct, performance that tends to be open-ended in time and even in the identities of the parties to whom the performance will be owed. Remedies like these are reminiscent of the kinds of programs adopted by legislatures and executives. If they are to be translated into action, remedies of this kind often require the same kinds of supervision as other government programs do.[29]

> Sweeping use of federal equity power has obvious implications for federalism. When a judge undertakes systemic relief, he displaces the elected and appointed officials who normally supervise the state or local function that is the object of that litigation. . . . There is a genuine danger of a judge's "tunnel vision"; . . . he has no occasion to be concerned about the impact of his ruling on limited state or local financial resources. Understandably, the judge is likely to say that Constitutional rights cannot be denied by an appeal to budget difficulties. As a result, public resources may fund a function or service which is the subject of litigation at the expense of other valuable services not before the court. This is not intended to insinuate that a judge does not act out of felt necessity and on the basis of demonstrated need, but it does call attention to the extent to which systemic reforms, undertaken through the federal courts' equity powers, displace the normal democratic and political process.[30]

> But are federal courts all over the country to decide the questions, levy the taxes, and distribute the revenues? Not to act would be to acknowledge judicial futility. To act would be to adopt a tax and fiscal policy for the state. It might even become necessary to set up the machinery to make the policy effective. In addition to questions of competency, those of legitimacy would surely

> arise. Even in the case of legislative default, does a federal court—usually a single judge—have legitimate power to levy taxes on people without their consent, and to decide where and how public money shall be spent?[31]

The Supreme Court: Delivering a Message of Deference

Exactly how the Supreme Court feels about the day-to-day judicial management of state institutions is less than clear. However, three fairly recent cases have been characterized by not so veiled calls for increasing judicial deference.

In 1981, the Court was asked to rule on the Constitutionality of double-celling at the Southern Ohio Correctional Facility, an otherwise "unquestionable . . . topflight, first-class facility."[32] That circumstances at the institution in question differed markedly from conditions found in many state and local detention facilities caused the majority to rule that the double-celling of prisoners, in and of itself, did not constitute cruel and unusual punishment. The Court, however, then went on to note

> When conditions of confinement [do] amount to cruel and unusual punishment, "federal courts will discharge their duty to protect Constitutional rights." In discharging this oversight responsibility, however, *courts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution* or to the perplexing sociological problems of how best to achieve the goals of the penal function in the criminal justice system.[33]

More elusive from an institutional standpoint but potentially more consequential were two nonpenal decisions—*Rizzo v. Goode*[34] and *Youngberg v. Romeo*[35]—handed down in 1976 and 1982 respectively. To understand the Court's reasoning in *Rizzo*, one must understand what has come to be known as the *Younger* doctrine,[36] "a series of rules designed to protect the institutional autonomy of state governments by limiting the power of federal courts to enjoin or grant declaratory relief against unconstitutional state action in circumstances where parallel state proceedings provide federal litigants with an adequate forum for airing their Constitutional claims."[37] The *Younger* doctrine was originally formulated for, and generally thought to apply to comity between federal and state judicial proceedings. In *Rizzo* however, the Court—in attempting to balance federalism concerns with individual rights (a perennial American dilemma)—invoked the *Younger* principles to overturn a district court injunction against the Philadelphia police force.

Again, at issue in *Youngberg v. Romeo* was not the treatment of prisoners but rather treatment afforded a severely retarded resident of a state mental institution—an individual who could be expected to evoke a far greater degree of sympathy then one accused of, or convicted of a crime. Yet, the Court ruled against the patient and in so doing developed a test for determining whether a state has adequately protected the rights of the involuntarily confined. The crux of that test is a wide-ranging judicial deference toward "professional" judgment:

> . . . 'the Constitution only requires that the courts make certain that professional judgment was indeed exercised. It is not acceptable for the courts to specify which of several professionally acceptable choices should have been made.' . . . [C]ourts must show deference to the judgment exercised by a qualified professional. *By so limiting judicial review of challenges to conditions in state institutions, interference by the federal judiciary with the internal operations of these institutions should be minimized.* . . . In determining whether the state has met its obligations in these respects, decisions made by the appropriate professional are entitled to a presumption of correctness. Such a presumption is necessary to enable institutions of this type—often, unfortunately, overcrowded and understaffed—to continue to function.[38]

Whether *Youngberg* will have much effect on future litigation and judicial actions over jail and prison conditions is uncertain. What is certain, however, is that the Supreme Court has ordered the federal judiciary to at least presume professional correctness. And professionalism is not limited to the mental health community.

At least one observer does perceive a Supreme Court-inspired change at the lower court level:

> Corrections law is developing in such a way as to retain strong civil rights enforcement, but the enforcement mechanisms are private, traditional legal remedies. This is a

> dramatic shift from equitable "clean-up" decrees administered by federal district court judges.[39]

Nonetheless, the Supreme Court's overall message on institutional reform appears ambivalent:

> . . . Burger Court opinions, especially *Rizzo* and some of the school desegregation cases, reflect a restlessness about the sweep of federal court injunctive power, especially where it is used to undertake systematic reform of state and local institutions. In those opinions, federalism becomes a factor to weigh in reviewing the legitimacy and propriety of remedies ordered by lower courts. Yet, when one looks at the overall thrust of Burger Court opinions, it is difficult to conclude that the federal courts have been swayed in any fundamental way from their pattern in exercising equity powers.[40]

The Effects of Judicial Intervention

From small beginnings only a decade or so ago, prison and jail litigation has blossomed to the point that "one out of every five cases filed in federal courts today is on behalf of prisoners."[41] "The increase in civil rights petitions filed by state prisoners in federal courts has been remarkable—from 218 petitions in 1966 to 2,030 in 1970, to 12,397 in 1980"[42] to 16,741 in 1981.[43] Moreover, between 10 and 13% of all jails are presently under court order; between 16 and 22% have been involved in court actions; and between 17 and 20% are now party in a pending lawsuit.[44] The majority of such actions were brought or are being brought in federal court. Most observers would agree that no recent initiative in the field of corrections—federal, state or local—has had the sort of profound impact that federal judicial intervention has had on state and local institutional and administrative arrangements.

The role of the federal judge in the local jail is obviously a troublesome one. On the one hand, many would argue that a high degree of judicial intervention has been necessitated by the refusal of state legislatures and county boards to remedy constitutional violations. Indeed, more than a few local sheriffs secretly welcome such "intrusions" as the only way to attain money for improvements, badly needed and long requested. According to one expert:

> The number of collusive lawsuits is staggering. I don't know how many jail administrators have told me, "I know my jail is a pigpen, but I can't get cooperation from my county commissioners. So go ahead and sue me."[45]

Jail, the always forgotten community burden, may have found salvation in the black robes of the federal district judge.

Yet, there is reason to be less than sanguine over the emergence of the "managerial judge." The raising, allocation and spending of funds are legislative and executive functions—in these cases, *state and local* legislative and executive functions. Disturbing questions are raised not only about separation of powers but about federalism as well. Thus, the new judicial mandates are like the proverbial two-edged sword—cutting for jail improvement, but against local discretion.

The Impact of Unconstitutional Prisons on Jails

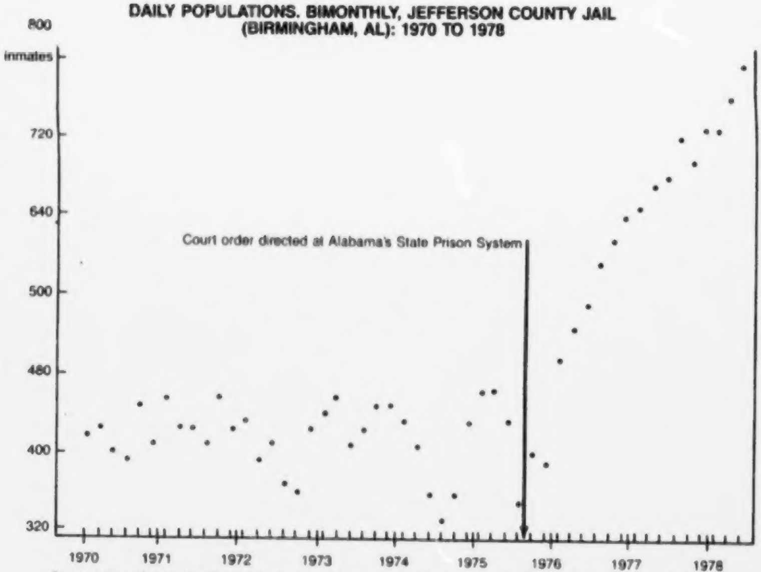
Before leaving the subject of judicial intervention, it is important to note—however briefly—a secondary yet extremely salient effect. That is, at the same time that federal judges are *directly* working to assure that local jails are up to passing Constitutional muster, ironically, federal court orders on state prisons and prison systems may work *indirectly* to exacerbate existing unconstitutional conditions at the local level.

For example, in order "to reduce inmate populations," U.S. District Court Judge Frank Johnson prohibited most new admissions to Alabama's major prisons. "[T]he freeze . . . meant a backup of many inmates in local jails where conditions frequently were even worse than those in the state institutions."[46] At its height, in the late 1970s, this prohibition resulted in 1,800 state prisoners being held in local facilities.[47] That number was reduced only, slightly to 1,485 in 1981.[48]

Nationwide, an estimated 8,600 state inmates were incarcerated in local jails in 1981, an increase of 1,500 over the previous year.[49] Although it is difficult to ascertain exactly how many of these individuals are so detained because of court orders, the precipitous increase in their number coincides with an increase of federal judicial activity at the state level *(see Graph IV-1)*. Thus, "[d]uring 1981, the number of states under court orders to reduce overcrowding rose from 28 to 31, while the number involved in

Graph IV-1

DAILY POPULATIONS. BIMONTHLY, JEFFERSON COUNTY JAIL (BIRMINGHAM, AL): 1970 TO 1978



Source: Jefferson County Jail Records, U.S. Department of Justice, National Institute of Justice, *American Prisons and Jails*, vol. 1: *Summary and Policy Implications of a National Survey* (Washington, DC: U.S. Government Printing Office, 1980), p. 38.

litigation about overall prison conditions increased from 32 to 37."[30]

In some jurisdictions, the spillover of state prisoners has produced a great deal of friction between state and local officials—friction over mixing felons with misdemeanants and pretrial detainees and, even more so, over adequate reimbursement amounts. Accounts of bizzare last-ditch-efforts by frustrated sheriffs have appeared in newspapers over the last few years. For example, in 1981, the sheriff of Pulaski County, AR, chained 19 prisoners held in his jail to posts and fences outside two state prisons. The prisoners had been retained in the county jail because the state was under court order to improve its own system.[31] Obviously, such publicity-generating ploys are rare but as pressures for more adequate living arrangements increase at both levels, intergovernmental friction is also likely to increase.

Although the prison overcrowding issue lies outside the purview of this study, it is becoming increasingly evident that some states will soon be forced to find alternatives to the stop-gap use of the county jails as more and more local institutions find themselves under court orders limiting the number of inmates they can house. In some cases, as recently occurred in New York, such orders are aimed specifically at removing state inmates from local facilities whether or not the state has had time to construct sufficient bedspace of its own. In addition, a new trend in overcrowding litigation—case consolidation—may make implementing jurisdictional inmate transfers more difficult. For instance, in the case of *Hamilton v. Morial*, the U.S. Court of Appeals for the Fifth Circuit recently ordered all pending and future correctional institution cases in Louisiana (including 25 ongoing jail cases) to be consolidated under the aegis of one district judge. Speaking directly to the practice of passing state overcrowding problems on to local facilities, the court cautioned that "[c]onsolidating all court actions allows the issue that will not go away to be faced squarely without harrassment."

THE CONTRACTUAL APPROACH: LOCAL JAILS FOR FEDERAL PRISONERS

If the federal government, through its judicial branch has acquired the role of commander vis-a-vis the local jail, that same government, through the limitations of its own prison system, has been forced to don the robes of suppliant.[32] Very simply, the United States does not maintain penitentiary space sufficient to house its own prisoners and has long relied on state and local correctional facilities. Nor is this merely a supplementary arrangement—in 1982, two-thirds of all federal prisoners resided in nonfederal institutions.

Responsibility for placing federal prisoners rests with the U.S. Marshals Service, a division of the Department of Justice. Although all 50 states have passed laws requiring or allowing local governments to accept federal prisoners, the service does not force its wards on local jails. Rather, through a process of negotiation, the marshals and receptive local jurisdictions enter into intergovenmental service agreements providing some reimbursement for local costs. In fiscal year 1982, the federal government spent about $26 million to house its prisoners in local facilities at an average daily rate of $27.29. Unfortunately for the federal prison system, such agreements have fallen on hard times. In the past several years, the number of local contracts has dropped from over 1,000 to 733, including 167 "major use contracts" in federal court cities. The combination of a projected substantial enlargement in the federal prisoner population due to the Administration's drug and organized crime initiatives and increasingly recalcitrant local governments has become cause for a great deal of federal anxiety.

At one time federal prisoners were readily, if not always gladly, accepted by local jails as an additional source of income, but real and perceived problems of housing federal inmates now have caused more and more local jurisdictions to close their doors to the Marshals Service. Thus, as much of the foregoing suggests, many jails are overcrowded with their own or state prisoners; are under court order to alleviate conditions of confinement; or view federal criminals as many times more dangerous than local or even state offenders. Moreover, there exists a widespread preception that federal prisoners tend to be a legally sophisticated lot, capable of tossing off Section 1983 suits at the drop of a hat. In fact, however, of the 17,775 civil rights actions filed by prisoners in 1982, only 834 were filed by federal prisoners and most of those were filed against the federal government. Nonetheless, for many jail officials, fear of Section 1983 and other civil rights actions appears to outweigh the potential benefits of $27 per day.

In response to such concerns, the Marshals Service has initiated a number of recent innovations in hopes of rekindling some interest in housing federal prisoners. First, in order to reduce the amount of red tape endemic to any contractual agreement, the Office of Management and Budget (OMB) has waived the regular federal procurement form requirement for contracts between the marshals and local jail authorities. Rather, local administrators now need only sign a relatively simple intergovernmental service agreement.

Second, the Marshals Service recently initiated the Federal Excess Property Program. Its purpose is to supply local jail with excess federal materials such as clothing and blankets. Thus far, $1.5 million worth of property has been funneled into local facilities. The program, however, is not without strings. The value of excess property cannot exceed the annual contract value and, much to the chagrin of some jail administrators, the accountable property remains in control of the marshals.

Third, under the Cooperative Agreement Program, local jails in "major use cities" currently under court order or facing litigation may be eligible to receive money from the service for renovations, additions, new construction, and supplies deemed necessary to achieve compliance. In return, such jails must agree to guarantee to house federal prisoners for some specified period of time. Twenty-six million dollars has been made available to the program in 1983.

Fourth, the service has 120 inspectors available nationwide to provide technical assistance and training to local jail personnel. While some of this assistance is provided gratis, in other cases a fee for service is charged.

Fifth, in some cases federal lawyers may now represent local jails in suits brought by federal prisoners. Jails receiving such representation, however, must demonstrate compliance with Department of Justice *Prison and Jail Standards*.

Finally, the Marshals Service and the Bureau of Prisons have proposed a new Surplus Real Property Program. If passed, the program would allow the General Services Administration and the military to deed certain properties to states and local governments for the purpose of maintaining prisoners. However, while legislation passed the Senate in 1982 it remained stalled in the House Governmental Affairs Committee and current prospects for passage in 1983 appear dim. Meanwhile, the service is also attempting to secure the authority to donate excess personal property directly to local jails.

THE FINANCIAL APPROACH: USING THE DOLLAR TO PURSUE CORRECTIONAL AND CONSTRUCTION STRATEGIES

Even today, when one thinks of a federal role in the broadly disparate field of state and local law enforcement and criminal justice, neither the federal courts nor the U.S. Marshals Service is likely to come to mind initially. Rather, a now defunct agency has left in its wake an ambivalent but powerful legacy of negative impressions on the one hand and feelings of marked improvements on the other. Such was the lasting bequest of the Law Enforcement Assistance Administration.

A thorough assessment of the impact of LEAA on local corrections is well beyond the scope of this study. However, a brief historical description of the program is worthwhile because it was the genesis of signifiant intergovernmental relations in criminal justice generally and in corrections particularly.

LEAA and the Intergovernmentalization of Justice

On March 8, 1965, President Lyndon B. Johnson announced to Congress that crime was no longer merely a local problem.[53] He further announced creation of a presidential Commission on Law Enforcement and the Administration of Justice and asked Congress to institute a pilot program of grants-in-aid. Congress responded in the same year with the *Law Enforcement Assistance Act*, launching a new Office of Law Enforcement Assistance (OLEA) and a $7 million annual project grant program. Interestingly, the only state-local interest group to campaign actively for the measure was comprised of corrections officials favoring experimental programs in community-based corrections.

Following release of his Commission's recommendations in 1967,[54] President Johnson asked Congress to pass an extensive program of categorical grants to state and local governments. A motherhood and apple pie issue, the anticrime proposal, nonetheless, left some members of Congress feeling uneasy over the prospect of a strong new federal role in such longtime state and local functions as policing, prosecuting and penalizing. Thus, some feared the genesis of a federal police force circumventing or preempting the traditional police powers of the states while others expressed concern that such legislation might create a "Super Cop" in the person of the U.S. Attorney General, overseeing and directing all state and local law enforcement activities.

The result of those anxieties, coupled with the even greater fear of crime and its effects, was the *Omnibus Crime Control and Safe Streets Act of 1968*, a heavily block grant-oriented program to be administered by the Law Enforcement Assistance Administration (LEAA) in the Department of Justice. Specifically, the act provided for "action grants," 85% of which were to be allocated to the states on the basis of population as a block grant, with 75% of those funds to be passed through to local governments. The remaining 15% of the grants were to be used at the discretion of LEAA. The federal government agreed to cover up to 75% of the costs of organized crime and riot control programs, 50% of construction programs, and 60% of other action programs.

Responding to the perennial problem of the near-chaotic criminal justice system, the law provided for creation of state planning agencies (SPAs) to be designated by governors for the purpose of developing comprehensive criminal justice plans. Grants were made available to cover up to 90% of the operating costs of the SPAs. Finally, the act initiated a program of training, education and research. In 1969, $100 million was authorized of which $25 million was to be allocated to planning, $50 million to action grants, and the remaining $25 million to research, education, and training endeavors.

For the purposes of this study, the most important amendments to the crime fighting act were those that added a new Part E for correctional enhancement. Passed in 1971, the amendments provided for grants with a federal share of up to 75% for constructing, acquiring and renovating correctional facilities. The emphasis was to be on community-based programs and facilities. Fifty percent of the funds under Part E were to be made available to SPAs in block grant form while the remainder were to be disbursed at the discretion of LEAA.

To assure a corrections emphasis, SPAs were instructed not to reduce the amount of action monies previously available for corrections, thus tying Part C (action grants) to Part E funding. Indeed, 25% of all LEAA appropriations were now earmarked for correctional purposes. Responding to complaints that no correctional "system" existed, SPAs were additionally required to submit comprehensive corrections plans.

At its height, the federal law enforcement program was again amended by the *Crime Control Act of 1973*. While the new legislation added criminal rehabilitation and prevention of juvenile delinquency to the goals of LEAA and altered its administration, its major thrusts were in the area of planning. Thus, representation on planning agencies—both SPAs and Regional Planning Units (RPUs)—was extended to citizen, professional, and community organizations and states were required to provide procedures for submitting local annual plans to the SPAs. The fact that LEAA was still viewed with some favor was evident in Congressional authorizations of $1 billion each for FY 1974 and FY 1975 and $1.25 billion for FY 1976.

If 1971 was the year of corrections and 1973 the year of planning, 1976 was the year of the judiciary. SPAs were required to set up judicial planning committees to prepare plans, make available $50,000 annually to those committees, and establish priorities for court improvement. 1976 was, in addition, notable for the establishment of the Community Anti-Crime Program.

The long and painful legislative death of LEAA began in 1979 with passage of the *Justice System Improvement Act*. The act created an Office of Justice Assistance, Research and Statistics (OJARS) designed to coordinate the activities of and provide support services to LEAA, the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS). LEAA's authorizations had declined from a massive $1.75 billion in FY 1973[85] to a relatively paltry $486 million, only part of which it would receive under the umbrella of OJARS.[86] Moreover, and perhaps as telling, the thrust of LEAA was changed. Always encouraged to spend on innovative projects, it was now required to fund only programs having "a record of proven success, or . . . a high probabiltiy of improving criminal or juvenile justice system functions."[87] And, in fact, fiscal year 1980 was the last year in which there was an appropriation for LEAA grant programs. Instead, according to one observer, "From FY-80 up until the present, LEAA (and its successor agency, OJARS) has been in a phase-out operation, letting existing projects run their course and closing out all remaining grants and projects."[88]

Fourteen years and $7.7 billion later, LEAA expired officially in April 1982. Born amid the highest expectations, the crime program foundered on a number of perceptions and realities, including rising crime rates; the continued deterioration of prisons and jails; allegations that it was a mere boondoggle for police departments with illusions of high tech grandeur; "creeping categorization" in an era of disenchantment with categorical grants; and the need to balance the federal budget.

A complete rundown of all LEAA-sponsored local correctional programs and facility support projects over its 14 years of operation is beyond the capacity of this study.[59] Nonetheless, in a report prepared for the National Coalition for Jail Reform, LEAA attempted to delineate its jail and jail-related programs for the years 1978 and 1979 only. Generally, the agency reported that

> LEAA has primarily impacted jail operations and facility construction by two methods: discretionary grant awards for programs that will upgrade jail conditions and technical assistance to those facilities that require outside help to develop, implement and/or evaluate advanced practices in correctional planning, programs and architecture.[60]

More specifically, during those years LEAA aided local corrections in the following ways:

- Just over *$8 million* was awarded during FY 78 and FY 79 to *40 jails* for renovation of existing facilities or construction of new facilities.
- *Twelve* jails received *$1.1 million* in FY 78 to upgrade facility medical and health services.
- Another *11 jails* received approximately *$700,000* in FY 78 and FY 79 to establish comprehensive drug and alcohol treatment and identification programs responsive to the needs of their residents.
- Seven restitution grant awards totalling about *$1.3 million* and affecting at least *19 county or local jails* were made in FY 79.
- LEAA has nearly *$5 million* invested in *21 TASC* (Treatment Alternatives to Street Crime) programs that are currently operating.
- Since 1978, about *$2.7 million* has been used to establish about *50 projects* (which affect at least an equal number of jails) to study strategies to reduce the incidence of jail overcrowding by shortening lengths of pretrial detention.
- Approximately *60 project sites* have been funded since 1978 to reduce court delay—at a total cost in excess of *$3 million*.
- In 1978 LEAA awarded in excess of *$1.2 million* to the American Medical Association (AMA) to provide technical assistance to ten jails in each of 22 states, for a total of *220 jails*, county and local.
- In 1978 LEAA awarded a total of *$1.2 million* to the Midwest Research Institute and the National Clearinghouse for Criminal Justice Planning and Architecture (NCCJPA) to provide planning, programmatic and architectural assistance to agencies eligible to apply for Part E discretionary grant funds. During the course of the contract *73 jails* were served.
- 1978 marked the completion of a 2-year, *$10 million* study by the Office of Juvenile Justice and Delinquency Prevention to develop community-based alternatives for status offenders. *Eleven* jurisdictions participated.[61]

Moreover, in the long-run, LEAA has received praise for its innovations in and encouragement of commmunity-based corrections, professional standards, educational programs and correctional architecture.

While such figures and programs are impressive, it should be noted that even with the infusion of LEAA funds, the federal share of state and local correctional spending has always been small. For instance, in 1979, "for every federal [correctional] dollar spent . . . State governments spent $9.62 and local governments $5.60."[62] In 1981, states spent $11.66 and localities $6.24 for every federal correctional dollar.[63]

Current Federal Assistance

The dissolution of LEAA brought with it a rather abrupt end to anything approximating a substantial federal financial commitment to local corrections. Nonetheless, the federal government, through the National Institute of Corrections (NIC), does maintain a direct, ongoing, and positive interest in the local jail.

NIC was created in 1974 "to help advance the practice of corrections at the state and local levels."[64] Recent programs and activities have included:

- *Jails area resource centers*—a network of advanced jail systems that are funded by the institute to provide practical training, technical assistance and information to other jailers in their geographic areas.
- *Standards development and implementation*—a project where state agencies are funded to develop, revise and implement jail standards for local jails in those states.
- *Small jails assistance*—an ongoing program that enables state jail inspectors, sheriffs' associations, and other relevant parties to deliver technical assistance and training to small, often rural jail systems. . . . [T]raining and assistance are brought to them.
- *Planning new institutions*—a program providing training and technical assistance in architectural design, correctional standards, systems planning, community involvement and relevant legal considerations to jurisdictions planning construction or renovation of a jail. . . .
- *Training of jail authorities*—programs specifically designed to meet the training needs of sheriffs, jail administrators and others responsible for the operation of jails. County commissioners and state jail inspectors also participate in select programs.
- *Building state capacity to serve jails*—an ongoing program where the institute works with organizations and agencies within the states to build the state's long-term capacity to provide training and technical assistance to its jails.[65]

While NIC does maintain a modest grant program for research and development purposes,[66] its major direct link to individual jails is in training, technical assistance and information dissemination.[67]

In addition to those NIC programs obviously aimed at jails and local corrections, 228 federal programs in widely disparate fields have been identified as sources or potential sources of aid for correctional organizations, staff and clientele."[68] Running the gamut from the price support and loan activities of the Department of Agriculture to the Community Development Block Grants of the Department of Housing and Urban Development to the Aerospace Education Services Project of the National Aeronautics and Space Administration, the programs tend to be only peripherally (if at all) related to corrections. Consequently, they are little known to or sought out by corrections officials.

THE REGULATORY APPROACH: MANDATES, STANDARDS AND PRISONERS' RIGHTS

> The federal approach of providing financial resources, technical assistance and useful research is on the wane. In its place the federal government is showing signs of shaping a new role for itself—that of regulator.
>
> The remarkable aspect of this development is that this transformation in the federal role is taking place without an articulated policy. The LEAA program is the casualty of the push for a balanced budget. No federal policy has been articulated to explain its phase-out, and equally little attention has been paid toward rationalizing the emerging federal regulatory role. In fact, recent developments leave the impression that the new direction is being generated because of specific federal interventions into state and local criminal justice operations: activities are generating policy rather than the reverse.[69]

Indeed, while federal assistance to local jails—and state-local criminal justice generally—has waned, at least three federal laws and one executive branch document continue, to some degree, to influence their operation.

The Juvenile Justice and Delinquency Prevention Act

In 1974, Congress passed the *Juvenile Justice and Delinquency Prevention Act (JJDPA)*. Originally designed as a broadly based formula grant with the goal of increasing "the capacity of state and local governments for the development of more effective education, training, research, prevention, diversion, treatment and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system,"[70] through a series of amendments *JJDPA* "has become increasingly preoccupied with obtaining one specific goal that of removal of [juveniles] from detention and correctional facilities."[71]

Thus, "the principal amendment contained in the 1980 reauthorization to the *Juvenile Justice and Delinquency Prevention Act* mandated that those states and territories receiving grants under the legislation must remove juveniles from adult jails and lockups by 1985."[72] With 52 states and territories currently receiving formula grants under the program and, as previously mentioned, anywhere from 100,000 to 1 million juveniles jailed annually nationwide, the 1980 amendments represent a tall order.

The problems associated with incarcerating juveniles alongside adults are not to be lightly dismissed; nor is a policy which seeks their removal from such institutions. Indeed, many practitioners and nonpractitioners would agree that current methods integrating adults and children in secure facilities are not only counterproductive but may be dangerous and debilitating to the youths involved and, as a previous section of this chapter noted, are being Constitutionally questioned in some courts. Yet in its report to Congress on the costs of removing juveniles from jail, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) indicated that the Congressionally mandated 1985 removal date might be difficult to attain in some states. OJJDP cited the following potential obstacles to complete removal:

- a lack of locally accessible alternative programs and services (including transportation);
- a lack of specific release/detain criteria (i.e., objective intake screening);
- state statutes which allow law enforcement the authority to detain youth predispositionally in adult jails;
- economic obstacles evidenced by small tax bases and a low priority given to the issue of children in jail;
- political obstacles that often occur when several counties pool efforts and resources together in a cooperative removal plan; and
- perceptual differences regarding the type and scale of alternatives needed (for example, secure detention perceived as the single-solution alternative to adult jail).[73]

In the absence of more substantial federal financial and technical assistance, such impediments may doom the nearby attainment date to the status of a legal pipedream in some states. Moreover, according to one observer:

> [The amendments] could not only cost state and local governments more money to participate in the program, but [they] could also be counterproductive. The adverse effect could come about as a result of economy of scale. Building separate facilities for juveniles potentially creates more bedspace for juveniles. This increase in bed space would create pressure to fill the beds in order to justify the facility.
>
> The problems with an approach like that of the *Juvenile Justice and Delinquency Prevention Act* are not with the goals but with the implementation strategy. A national mandate is enunciated and backed up with specific substantive regulations, displacing the partnership approach with one that seeks compliance.[74]

Alcohol Traffic Safety and National Driver Register Act

In the fall of 1982, Congress passed the *Alcohol Traffic Safety and National Driver Register Act*. The act does not directly affect local jails but it may eventually have an indirect impact.

Title I of the act authorizes the Secretary of Transportation to "make grants to those states which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol."[75] Although the rulemaking process is still going on, the legislation itself suggests such changes in state laws as:

> 1) providing that a person with a blood alcohol concentration of 0.10% or greater when driving shall be deemed to be driving while intoxicated;
>
> 2) raising the perceived threat of apprehension through greater enforcement by the police and highway patrol and more warn-

> ings via television, radio, the press and the schools;
>
> 3) establishing or expanding a statewide driver record system readily accessible to the courts and the public which can identify drivers repeatedly convicted of drunk driving;
>
> 4) *affording the courts a wide array of sanctions from which to choose for punishing and treating convicted drivers, e.g., community service, fines, imprisonment, education and treatment. . . .*[76]

The fourth item mentioned, of course, is the most pertinent to the subject at hand. Hence, while the incentive grants will be distributed directly to the states with no pass-through provision,[77] the most cost-intensive suggested change—the actual implementation of court-ordered sanctions—will come, for the most part, at the expense of local governments, correctional agencies and jails. Whether individual states will choose to reimburse localities for the costs of the law remains to be seen. However, California offers an instructive example of potential conflict. There, counties are suing the state to pay the increased costs of implementing a number of expensive new mandates. The biggest bone of contention is a law setting mandatory penalties for drunk driving. Counties claim that the mandate is taxing jail facilities to the limit.

The Civil Rights of Institutionalized Persons Act

As the first section of this chapter illustrated, it is not just through the provision of assistance (with or without strings attached) that the federal government affects local jails. The now familiar phrase, "judicial power of the purse," has nothing to do with the dispensing of largess out of some courtroom fund. In the same vein, not all Congressional nor Executive Branch activities are designed to financially aid state and local governments. For instance, in May 1980, in response to court rulings that in the absence of specific legislation the Department of Justice lacked standing to bring suit on behalf of state or locally institutionalized persons, Congress passed the *Civil Rights of Institutionalized Persons Act*. The act contains three provisions of special import to local governments and jail administrators.

First, it authorizes the Attorney General, after consultation with state or local officials, to institute civil actions in federal court against states, local governments or their agents believed to be harming institutionalized persons through a pattern of resistence to the safeguarding of Constitutional or statutory rights, privileges or immunities. Such suits would be designed to gain equitable relief for the purposes of taking corrective action.[78]

Second, the Attorney General may intervene on behalf of aggrieved inmates in suits brought against state or local institutional practices.[79]

Finally, the Attorney General, in consultation with appropriate state and local agencies, is authorized to promulgate minimum standards for the development of grievance resolution procedures for jail and prison inmates.[80]

A reading of the act could (and has) lead to accusations of undue federal intrusion into state and local institutional management. However, implementation "activities" to date reveal the law to be little more than a statutory paper tiger. Thus, the Reagan Administration has been anything but a vigorous enforcer. Indeed, as of February 1983, the Attorney General had not initiated any actions under authority of the act and had intervened in but a single suit involving a mental institution.[81] This appparent ennui, in fact, appears to reflect a concerted effort by the Administration to back away from state-local prisoner support actions generally. For example, U.S. District Court Judge William Keady recently dismissed the Department of Justice from participation in a long-standing Mississippi prisoners' rights case, claiming that the department had taken "inconsistent positions." Judge Keady's order came on the heels of a department brief that questioned the authority of federal courts to order inspections of local jails.[82]

Nor has there been a "groundswell of interest" at either the federal or state and local levels in developing inmate grievance plans.[83] Again, as of February 1983, only one state plan—that of Virginia—had been certified by the Bureau of Prisons and only a handful of additional jurisdictions had even bothered to submit plans.[84]

Federal Standards for Prisons And Jails

On December 16, 1980, the Department of Justice under then Attorney General Benjamin Civiletti released a detailed set of voluntary federal standards for adult correctional facilities including state and local prisons and jails.[85] The standards cover 21 topics ranging from inmate rights to sanitation to classification to administration and management. Developed as mere guidelines, the Carter Justice Department nonetheless stressed the fact that the standards would be used

> . . . in administering any Department of Justice financial or technical assistance in the area of corrections [and] in evaluating corrections grant applications, research proposals and other requests for financial or technical assistance. . . . [and]
>
> . . . [to] provide guidance to the litigating divisions of the Justice Department . . . when they are engaged in litigation involving federal, state or local correctional systems. . . .[86]

In fact, then, the voluntary nature of the standards was mitigated to a certain—and potentially significant—extent.

As in the case of the *Civil Rights of Institutionalized Persons Act*, however, the Reagan Administration and Attorney General William French Smith moved fairly swiftly to dispel notions that the standards would be anything but "advisory guidelines." Substantially curtailing the preamble, DOJ also pointedly retrenched from utilizing the standards for grant purposes or as the bases of department litigation.[87]

The Reagan Approach: A Declining Role for Mandates and Standards

As much of the foregoing suggests, the Reagan Administration approach to regulating nonfederal correctional institutions may be characterized as exceedingly restrained. That description, of course, is not limited to state prisons or local jails. Nor does it imply disinterest or impotence. On the contrary, the Administration has consistently and vigorously pledged to cut back on federal regulations—both those affecting the private sector and those directed at state and local governments.

Thus, although neither the *Civil Rights of Institutionalized Persons Act* nor the *Federal Standards for Prisons and Jails* have been among the rules targeted by the Presidential Task Force on Regulatory Relief, Administration reinterpretations of, and actions under both have been dramatic. In the case of the civil rights legislation the result has been veritable inaction while the jail standards have been altered from Carter-era grant conditions and causes for litigation to mere federal suggestions.

Moreover, Attorney General Smith has more than hinted at Administration displeasure over the role of federal courts in the institution cases:

> . . . federal courts have attempted to restructure entire school systems in desegregation cases and to maintain continuing review over basic administrative decisions. They have asserted similar control over entire prison systems and public housing projects. They have restructured the employment criteria to be used by American business and government, even to the extent of mandating numerical results based upon race or gender. No area seems immune from judicial administration. . . .
>
> In the area of equitable remedies it seems clear that the federal courts have gone far beyond their abilities. In so doing, they have forced major reallocations of governmental resources, often with no concern for budgetary limits and the dislocations that inevitably result from the limited judicial perspective.[88]

That "displeasure" was further illustrated in late 1982 when proposed rules for limiting the use of Legal Services Corporation funds were published in *The Federal Register*.[89] If finalized,[90] the rules would severely limit the ability of fund recipients to file class action lawsuits against federal, state or local government agencies. In the past, such suits have been brought against correctional institutions.

Finally, as a way of limiting federal court intervention into state court decisions, the federal government's chief law enforcer has recommended amending the habeas corpus statutes[91]—an approach which may not be necessary given recent restrictive Supreme Court rulings in that area.

THE FUTURE OF THE FEDERAL ROLE: A LOOK AT SOME RECENT PROPOSALS

The Reagan Agenda

While President Reagan long has been deemed a "law and order conservative," his record on criminal justice issues since assuming office has been an ambivalent one—certainly ambivalent to the extent that major initiatives are apt to fly in the face of fiscal austerity. Nonetheless, the Administration has taken several opportunities to address the problems of crime in America and to suggest potential policies for alleviating those problems.

THE ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME

On April 10, 1981, Attorney General Smith appointed an eight-person task force "to make specific recommendations to [him] on ways in which the federal government could do more to combat violent crime."[92] Jointly chaired by Carter Attorney General Griffin B. Bell and Illinois Governor James R. Thompson, the task force considered many topics including federal assistance to state and local corrections, finally recommending $2 billion for constructing *state* facilities."[93]

Although the panel acknowledged the "needs" of local correctional authorities, it nonetheless asserted that

> Another outcome of resource limitations is that the federal government cannot effectively meet the construction needs of both states and local governments. There are simply not enough dollars to go around. Consequently, we have determined that available monies should be given to the states, as we perceive them to exhibit the greatest need. . . . We do believe, however, that the needs of local correctional agencies should continue to be examined. . . .[94]

As a result, no direct federal financial assistance was recommended for the local jail. However, the report did suggest:

1) amending the *Federal Property and Administrative Services Act of 1949* to "permit the conveyance or lease at no cost of appropriate surplus federal property *to state and local governments* for correctional purposes. . . . ;"[95]
2) making "available, as needed and where feasible, abandoned military bases *for use by states and localities* as correctional facilities on an interim and emergency basis only [and] mak[ing] available, as needed and where feasible, federal property for *use by states and localities* as sites for correctional facilities;"[96] and
3) amending "the *Vocational Education Act and other applicable statutes to facilitate state and local correctional agencies'* ability to gain access to existing funds for the establishment of vocational and educational programs within correctional institutions."[97]

REAGAN 1981: A BULLY PULPIT BUT NO AID

In the same month that the Attorney General's Task Force announced its 64-point anticrime program, White House counselor Edwin Meese III, was warning those concerned with state and local corrections, "Don't count on any new money."[98] That pithy statement—not the detailed Justice report—was to be the harbinger of Presidential sentiment.

Thus, in late September, Reagan delivered a decidedly hard-line speech to the International Association of Chiefs of Police (IACP) containing "only two sentences directed at corrections"[99] and nary a word aimed at federal financial support. Stating that "Only our deep moral values and strong social institutions can hold back [the] jungle and restrain the darker impulses of human nature,"[100] the Chief Executive promised to use the "'bully pulpit' of the Presidency to remind the public of the seriousness of [the crime] problem and the need *to support [state and local] efforts to combat it.*"[101] Such an approach, if felt by some to be inconsistent with the President's hard-line rhetoric, was entirely consonant with and even prescient of his "New Federalism" initiatives which would first be propounded only four months after the IACP speech. After all, criminal justice in nearly all its permutations has always been primarily a state and local function. Moreover, 1981 marked the first year of a presidency committed to drastically curtailing federal domestic spending. Finally, the Administration was known to be less than enthusiastic about propounding a strategy that might result in "LEAA Revisited." Indeed, Associate Attorney General Rudolph Giuliani summed up, in the bluntest terms possible, Administration feelings on the subject:

> [M]aybe [state and local governments] should stop crying. We have gone through the era of spending $8 billion on crime through the Law Enforcement Assistance Administration and the crime rate didn't go

> down. Eight billion dollars thrown into the problem of crime is like spitting into the ocean. And what happened with LEAA was that it was starting to become a crutch for state and local governments.[102]
>
> The billions were used as an excuse for state and local politicians to avoid making the tough choices necessary—choices that would reallocate state and local tax dollars to law enforcement in general and to corrections in particular.[103]

Politically, economically, and to a degree ideologically, then, 1981 could hardly have seemed an auspicious time to propose a major new grant-in-aid program.

REAGAN 1982-83: FROM THE BULLY PULPIT, A DECLARATION OF WAR

> [M]illions of dollars will be allocated for prison and jail facilities so that the mistake of releasing dangerous criminals because of overcrowded prisons will not be repeated. . . . [L]et this much be clear: Our commitment to this program is unshakable; we intend to do what is necessary to end the drug menace and cripple organized crime.[104]

On October 14, 1982—just a little more than a year after delivering his "no frills" message to the nation's police chiefs—the President unveiled a plan for combating drug traffic and organized crime that included "millions . . . for prison and jail facilities." In addition to the call for jail and prison funds, the Reagan package called for: (1) establishing 12 regional drug task forces; (2) creating a blue ribbon panel to analyze the nationwide influence of organized crime; (3) forming a 50-state project, including participation by the governors, to examine possible criminal justice reforms; (4) instituting a cabinet-level committee under the aegis of the Attorney General to review interagency and intergovernmental cooperation in the fight against organized crime; (5) establishing under the Departments of Justice and Treasury, a National Center for State and Local Law Enforcement Training; (6) initiating "a new legislative offensive" to amend federal bail and sentencing laws and to override certain aspects of the exclusionary rule; and (7) instructing the Attorney General to submit an annual report on the status of federal crime fighting endeavors.[105]

Congressional response to the President's proposal came in the waning days of the 97th Congress' chaotic post election session. Clearing both houses on December 20, the crime package represented a hodgepodge of amendments to what had been a relatively simple bill reauthorizing drug treatment for federal offenders. Of particular interest, the new bill included a Title II "Justice Assistance Act", a scaled down LEAA clone providing for

> ☐ an Office of Justice Assistance to administer a program of about $130 million in block grants to states;
>
> ☐ a discretionary grant program authorized at about $35 million;
>
> ☐ a states' and local communities' match for any federal grant;
>
> ☐ the minimum block for any state [to] be $250,000; and
>
> ☐ the amount of block grants [to be based] on population.[106]

The Administration wasted little time in hinting to the press that the bill was unacceptable. The chief bone of contention, however, had nothing to do with creation of a new spending program. Rather, Justice Department officials demurred at Title III establishing a cabinet-level office of National and International Drug Operations and Policy to be headed not by the Attorney General but by what swiftly became known in the popular parlance as an independent "drug czar." Taking such concerns seriously, the President vetoed the bill in January 1983.

Almost simultaneous with his veto, Reagan released his fiscal year 1984 budget

> requesting budget authority of $90 million in 1984 for a new *criminal justice assistance grant program*. The program would provide training, technical assistance, and financial assistance to state and local criminal justice agencies with a special focus on the apprehension of violent and repeat offenders.[107]

While apparently not terribly dissimilar in broad outline to the just interdicted Justice Assistance Act, the President's 1984 proposal may run up against Congressional foes disgruntled over what they consider an unfortunate and embarrassing veto.

Corrections in the 97th Congress

The Justice Assistance Act was not the only Congressional attempt during 1981 and 1982 to aid state and local criminal justice activities. Indeed, at least six such assistance proposals were introduced without success in the 97th Congress.

THE CRIMINAL JUSTICE CONSTRUCTION REFORM ACT

On November 19, 1980, Senator Robert Dole (R-KS) introduced a bill designed to assist states and localities in constructing and renovating correctional and other criminal justice facilities. Reintroduced early in the first session of the 97th Congress, the "Criminal Justice Construction Reform Act" proposed the following:

1) a $5.5 billion authorization to cover fiscal years 1982 through 1987 of which
   a) $4.5 billion would be allocated among the states on a formula basis for the purposes of constructing new or modernizing existing state and local correctional facilities and
   b) $965 million would be used to support demonstration projects designed to test advanced correctional planning, construction and modernization techniques;
2) submission by grant-seeking states of state plans to include among other requirements
   a) development of a comprehensive statewide program for construction and modernization,
   b) assurances that local needs would be taken into account, and
   c) provision for the balanced allocation of funds between state and local government projects;
3) establishment of a Clearinghouse on Construction and Modernization of Facilities to collect and disseminate information; and
4) creation within the Department of Justice of a Criminal Justice Facilities Administration to carry out the purposes of the act.[108]

If a multibillion dollar program seemed an unlikely candidate for passage in 1981, its sponsor was no more optimistic, viewing the bill primarily as "a catalyst for discussion between members of Congress and representatives from criminal justice agencies and interested groups."[109] Not unexpectedly, the bill did gain support from a number of state directors of corrections,[110] the International Association of Chiefs of Police, the National Criminal Justice Association and the National Sheriffs' Association.[111] However, while certain members of the Justice Department and White House staff offered guarded support for the legislation, Budget Director David Stockman opposed the envisioned massive new expenditures.[112] Moreover, the National Association of Counties, among others, was resistant to the proposed legislation on the grounds that "[a] program of renovation and construction alone would only exacerbate . . . existing problems by unnecessarily promoting the expansion of jail population as well as the high costs of incarceration.[113] The bill failed to emerge from the Judiciary Committee.

OTHER PROPOSALS

The Dole bill, by virtue of planned authorizations alone, was certainly the most dramatic and well publicized piece of corrections or criminal justice-related legislation to emerge during the 97th Congress, but it was by no means unique in its thrust. And while a number of unsuccessful proposals were LEAA-like in nature,[114] at least two House bills were specifically aimed at state and local corrections.

One propounded piece of legislation would have authorized the Secretary of Commerce to make grants available to the states for acquiring constructing, expanding, repairing, and renovating state and local prisons and jails and for improving correctional programs and practices.[115] Still another would have allowed the Attorney General to enter into contracts with states and local governments for the purpose of making available proposed federally constructed regional correctional centers.[116] Each bill subsequently foundered in committee. Criminal justice bills containing varying degrees of corrections emphases have similarly emerged during the first session of the 98th Congress.

The Chief Justice: Toward a National Correctional Policy

Along with correctional administrators and guards, perhaps no profession has better reason to be concerned with the state of jails, prisons and penitentiaries than judges. They, after all, bear ultimate responsibility for sending individuals to such institutions. Among the thousands of judges nationwide, none has been more outspoken on the subject of correctional reform than the country's highest ranking jurist, Chief Justice Warren E. Burger.

Despite his long-espoused deference toward independent state functions and institutions, the Chief Justice recently asserted:

> Correctional policy, particularly during times of rapidly increasing prisoner populations and prison overcrowding, can no longer remain confined to one level of government or one segment of society. State, local and federal authorities must focus on these problems and in concert—within the framework of federalism—develop a national correctional policy to deal with them.[117]

To accomplish that objective, Burger has made it be known that in 1983 he "will propose that Congress create a National Commission on Corrections Practices to review these matters and propose remedial programs."[118]

The Future of the Federal Role in Local Corrections: The Fears, the Fisc and Federalism

Crime, the courts, and corrections—every facet of the nation's sprawling criminal justice nonsystem—are once again gaining nationwide attention. The crime rate appears, by some indicators, to be going down, yet the public expresses increasing fear of criminals. The clarion call for victims' rights is rapidly becoming a national movement. Court dockets at every level of government increasingly emulate the old adage that "Justice delayed is justice denied." Prisons are bursting at the seams and jails are widely said to be in a state of crisis—simultaneously overcrowded and underutilized, poorly staffed, and warehouses that produce only endlessly idle hours.

. National politicians and the media, too, are once more focusing on these seemingly intractable problems. To the President of the United States the answer would appear to lie in getting the "new privileged class" of "predators" off the streets. The Chief Justice wonders, "where and what to?" They are all—President, Chief Justice, and Congress—mired in a policymaker's nightmare—a problem that for decades has appeared to be insoluble. Nonetheless, they all express commitment to "do something."

"Doing something," however, is continuously expressed in dollar amounts, i.e., so many billions for construction and millions for programming. The result, over the past few years, has been deadlock.

At the same time, the ideology of the New Federalism presents an additional barrier to a redoubled federal effort in the field of criminal justice. Even during the height of LEAA, the federal role in criminal justice was relatively minor. States, historically, have been the overwhelming possessors of the police power with all its attendant functions.

Hence, the fear of crime faces formidable obstacles in the beleaguered fisc and in the New Federalism. Whether the fear is greater than the obstacles will determine the future of the federal role in criminal justice generally and local corrections particularly. In the meantime, in the absence of any major statutory initiatives and in the face of executive ambivalence, the federal judge will continue to hold center stage in relations between the local jail and the national government.

FOOTNOTES

1 Letter from Mark A. Cunniff, Executive Director, The National Association of Criminal Justice Planners, March 22, 1983.

2 Ronald Goldfarb, *Jails: The Ultimate Ghetto* (Garden City, NY: Anchor Press, 1975), p. 350.

3 A writ of mandamus is a legal order directing an executive, administrative, or judicial officer to perform an official duty.

4 The 1981-82 Supreme Court term saw the beginning of a move to restrict the use of habeas corpus petitions including the adoption of a "total exhaustion" requirement for petitions brought by state prisoners. See: *Rose v. Lundy*, 50 LW 4272 (1982). A writ of habeas corpus directs an official to produce a prisoner in court with an explanation of the reasons for his or her detention.

5 Cynthia Cates Colella, "The Mandate, the Mayor, and the Menace of Liability," *Intergovernmental Perspective*, Fall 1981, p. 15.

6 In relevant part, Section 1983 reads: "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

7 *Monroe v. Pape*, 365 U.S. 167 (1961).

8 *Monell v. Department of Social Services*, 436 U.S. 658 (1978) and *Owen v. City of Independence*, 445 U.S. 622 (1980).

Reproduced from U.S. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. Correctional policy. Oversight hearings, 98th Congress, 1st session. Washington, G.P.O., 1985. p. 63-67.

PREPARED STATEMENT OF ALLEN F. BREED, DIRECTOR, NATIONAL INSTITUTE OF CORRECTIONS

Mr. Chairman and members of the subcommittee: I appreciate the opportunity to appear before you this morning to discuss the National Institute of Corrections and the relationship between Federal, State, and local correctional policies. The National Institute of Corrections is the primary Federal resource to provide direct assistance to State and local corrections programs. These number 3,500 local jails, 529 state institutions, 2,900 probation and parole agencies, 745 community residential facilities, and 419 juvenile facilities.

The Institute was started in 1974 in response to a recommendation made at the National Conference on Corrections, convened by the Attorney General in 1971 in the aftermath of the tragic Attica prison riot. That recommendation—strongly supported at the conference by Chief Justice Warren Burger—called for a national training center for corrections personnel similar to the F.B.I. Academy.

The National Institute of Corrections' founding legislation mandated that it provide training, technical assistance, clearinghouse services, research, and policy/program formulation and development to improve State and local corrections. The Institute was first funded in 1977, as a line item in the Federal Bureau of Prisons' budget, at $5 million. It continues to be administratively attached to the Bureau.

Since 1977, the Institute has provided management and specialty-skills training to roughly 12,000 administrators, managers, and staff trainers working in corrections. It is estimated that an additional 150,000 corrections line staff have benefited by training sponsored by the Institute through small grants to agencies to devise and conduct staff training.

In July 1981, the Attorney General authorized the Institute to establish a National Academy of Corrections at Boulder, Colorado. The Academy opened on October 1, 1981. In the first year of operation, funded entirely out of existing appropriations, over 2,000 state and local corrections staff received intensive training. As state budgets are being reduced across the nation, training for corrections personnel has been reduced by as much as 50 percent.

Technical assistance to meet the most critical needs of state and local corrections continues to be in high demand, and the Institute last year provided on-site help to corrections agencies in nearly 1,000 instances. Assistance is provided only to agencies that officially request it; no effort is made to coercively approach the states and localities from the Federal level. Assistance provided covers a broad gamut—from helping small, rural jails develop the most basic of policy and procedures—to providing extended assistance in the aftermath of prison riots—to mediating contested conditions of confinement—to improving classification systems in institutions, probation, and parole.

Our information center in Boulder, Colorado, serves a longstanding need for current and accurate information to be made available to corrections practitioners and legislators. The information center is a national depository and clearinghouse for corrections information and provided assistance to over 5,000 requesters last year. The center also serves to link State, local, and Federal corrections efforts throughout the country, thereby reducing the isolation in which most corrections departments and programs had been operating.

Program development activities have produced transferable models in many critical areas. Models have been developed in prison and probation classification, an area that is critical to the effective placement and supervision of offenders. Models have also been developed in the areas of parole guidelines, bail guidelines, protective custody, inmate grievance mechanisms, and probation workload measures, to mention just a few; architectural design models for correctional facilities are currently being developed.

As one example, the Federal role in assisting the states in implementing effective offender classification systems has been most effective. Many offenders are overclassified, i.e., confined and/or supervised at unnecessarily high levels of security and deprivation. Currently, better than 50 percent of all inmates are classified and confined to maximum security facilities. However, based on the experience with the use of the latest classification technology, only 10 to 15 percent of the inmates in state institutions warrant this degree of security custody. The converse is true with minimum security where only 11 percent of the offenders are classified to this level of security, although as many as 30 to 35 percent may be so safely confined. Classification is not only critical to expanding to use of the most appropriate level of confinement necessary for public safety, but also as an economic factor to be considered in public policy choices regarding sentencing sanctions. Construction of a 500-bed maximum security prison, for example, averages $35 million, while construction of a 500-bed minimum security facility averages about $11 million. Annual operating costs of a maximum security prison average $12,000 per inmate—annual operating costs of a minimum security facility average $6,000 per inmate.

Annual operating costs for a probation supervision program average $463 per probationer.

Modern classification systems can provide the most cost effective, rational, and safe method of assigning offenders to the most appropriate program and custodial level.

In all of its work, the Institute strives to move state and local corrections toward levels of efficiency, cost-effectiveness, managerial competence, humaneness, safety, and fairness. Sound public policy is desperately needed to espouse programs and procedures that will give state and local corrections guidance on the elements of safe, constitutional, and equitable corrections systems.

Mr. Chairman, I will limit myself in regard to your request to discuss the relationship between Federal, State, and local correctional policies, to discussing the two most critical problems facing American corrections: severe overcrowding in our prisons and jails, and the disabling impacts of reduced state and local funding for corrections. I am not advocating a Department position, but rather am presenting concerns and ideas which represent state and local corrections.

Overcrowding is by far the most critical problem facing corrections today as we squeeze more than 400,000 people into prisons. An additional 160,000 are in detention in local jails throughout the country. The number of confined offenders in prisons has increased by 60 percent over the decade, 1970 to 1980. By the end of the

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third quarter of 1982, prisoners in state and federal facilities numbered 405,371 an increase of 29 percent in less than 2 years. If the number of people entering prisons continues to escalate at the same rate, the U.S. prison population will exceed half a million people before the end of 1984.

Because of severe prison overcrowding, nearly 10,000 state prisoners are backed up into county jails making the safety of local correctional facilities even more precarious.

In 1982, 39 states were under court orders to reduce prison overcrowding; 23 were operating under court-ordered limits.

Incarceration rates indicate imprisonment of 97 individuals per 100,000 population in 1970; 138, in 1980; 153, in 1981; and 169 per 100,000 population by the end of the third quarter of 1982. This increasing rate of incarceration is not only driving up the cost of state and local correctional services, but also consuming a greater proportion of annual state expenditures. In 1970, 1.2 percent of state expenditures ($931.4 million) was earmarked for corrections. For the current fiscal year, 2.63 percent ($6.1 billion) of state expenditures is budgeted for corrections.

In fiscal year 1982, state systems added 11,516 beds through new construction at a cost of $1.5 billion. These 11,516 beds represent space for less than half of the nearly 25,000 new prisoners that entered state facilities in the first half of 1982. We have all heard the astronomical costs of prison construction but seldom is it presented with an economist's portrayal of expenditure over a 30-year period. When a legislature decides to spend, say, $100 million in new prison construction, it is committing the taxpayer of that state to $1.6 billion in correctional expenditure over the ensuing three decades. Construction is only 6 percent of the charge to taxpayers over 30 years. For every dollar of construction, there will be $16 in operating costs. The construction is only the down payment.

The build/not build controversy has become so emotional that both sides find it hard to deal objectively with present conditions. Certainly there is some justification for the contention that new construction seems to result in a self-fulfilling prophecy as prison populations expand to fill the available space. But this argument ignores the increasing number of prisoners held in intolerable, overcrowded conditions as the states fail to replace outdated structures—not to mention building new space for increasing populations.

Jail and prison populations must be seen as less the result of such quantifiable indicators as the baby boom and the crime rate than the result of basic policy decisions reflecting beliefs about how we choose to deal with offenders. These policies represent the important and crucial explanatory element necessary to understand the current crisis of overcrowding.

Under this premise, the number of people in prison—rather than being a factor of demographics and the crime rate—is largely a result of decisions made by actors in the criminal justice system: police, prosecutors, defense lawyers, judges, corrections officials, parole boards, legislators, and governors. Thus, solutions lie not with jailers and wardens, but with the key decisionmakers spread throughout the criminal justice system.

Only as these key decisionmakers begin to accept responsibility for their actions in contributing to the problem and, in turn, are provided with the necessary information to make responsible reasoned decisions, will the crisis diminish. Just as we learned in the last century that there is no such thing as the free lunch, we now need to learn that locking people up is not a cost-free solution to an excessively high crime rate.

This somewhat gloomy appraisal does not imply hopelessness but, rather, is made to underscore that neither a stroke of the pen to enact new laws, a bountiful appropriation, nor a new commissioner of corrections by itself will make prison overcrowding go away. All of the studies—all of the analyses and technical solutions—will be of little value without a jurisdiction having a clear-cut public policy on corrections. This policy must reflect the courage to tackle the multiplicity of overcrowding problems—and the tenacity to shepherd long-term solutions. Do we need more prisons? We certainly do at the Federal level. The needs at the state and local level are as varied as the 50 states—as the many courts that sentence prisoners—and as the officers who arrest. An appropriate solution for one state may be politically, economically, and legally infeasible in another.

For a solution to be developed, the key decisionmakers must see prison overcrowding as a societal problem, not as a corrections problem. The Federal Government can assist in analysis of the need and propose alternative solutions, but the public policy decision to build or not to build belongs at the city, county, and state levels of government.

Increasing the capacity to incarcerate must be accompanied by serious efforts to assist jurisdictions in developing mechanisms for population control. This responsibility has been one which the National Institute of Corrections has pioneered, and should continue to be a major focus of its program development and technical assistance activities.

Regardless of new strategies for population control, State and local governments are going to have to construct some new jails and prisons.

I am not here to suggest that the Federal Government allocate funds for construction, at the state and local level particularly in light of the need to reduce Government spending. There is no single panacea to the problems of overcrowding, but one can suggest areas in which Federal programs could play a key role in assisting the current situation.

For example, the current overcrowding has been eased to a degree by the transfer of Federal surplus properties to these states and localities for correctional use. From October 1980 to date, a number of Federal properties have been transferred. Two of the properties were donated outright; leasing arrangements exist in most instances. An additional six property transfers are pending finalization of sale or leasing arrangements.

While the Administration has been supportive and bills are pending before Congress to authorize outright donation of surplus Federal properties for state and local correctional use, legislation was not passed at the last session of Congress. The donation of surplus Federal buildings and land on which the states,and localities could construct or remodel facilities would be a significant contribution.

Another problem that is having a severe impact on corrections is diminishing resources at the state and local levels to operate government programs. Although corrections workloads have markedly increased, the dollars available to provide necessary staffing and programming have dramatically decreased.

Corrections finds itself facing a double dilemma. As offenders are entering the prisons at unprecedented rates, prison staffs and inmate programs are being reduced. Increasing numbers of offenders are also being placed on probation and parole, yet resources to provide adequate supervision and support services are being reduced.

An example of the impact on state prison systems is the State of Michigan, where 85 corrections officers, 8 teachers and vocational instructors, and 36 support personnel in the prisons were laid off last fall due to a budget reduction for the corrections system of $3.6 million. Michigan, like other states, has some very old and dangerous institutions; three riots occurred there in 1981 that resulted in $5 million worth of damage.

Budget cuts also reduced the probation and parole agent work force by 50, which caused a marked increase in the size of caseloads.

Likewise, California's diminished resources reduced the operational budgets of 52 county probation departments by 32 percent. Caseloads in Los Angeles County soared to over 300 offenders per officer which provides little in the way of supervision and nothing in terms of public safety.

In Wisconsin, prisons are overcrowded by 900 inmates and population increases of nearly 15 percent last year is projected at similar levels until 1988. In January of this year, one Wisconsin prison experienced the taking of 15 hostages and damage to one building in excess of $55,000—all of which is attributed to overcrowding.

When Americans are concerned about safety in the streets, when state prison systems are being operated under conditions of confinement that have been found to be unconstitutional, when prisons have extremely poor physical conditions and serious safety and sanitation problems, reductions in probation, prison and parole workforces are simply intolerable.

Again, Mr. Chairman, I can only make general suggestions on how federal programs could help address these problems which exist at the state and local levels without incurring significant additional expense to the Federal government.

Perhaps our greatest help could be to assure that we at the Federal level do not make matters worse.

An example of doing so occurred in January of this year, when an amendment to the Service Transportation Act was passed which prohibited the manufacturing of certain products by state prisoners. Prohibitive legislation has a negative enough effect when it impacts the corrections system's ability to generate new programs. However, in this instance, the amendment has effectively shut down a 30-year-old prison industry that until recently operated in 37 prisons across the country. The State of Colorado alone has reported a projected loss of $400,000 in capital investment that will be idle; $146,000 inventory loss; $250,000 loss in sales; and loss of 45 inmate jobs and 3 civilian jobs. the State of Connecticut reported that $1.4 million

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in capital investment will be idle because of this one piece of legislation. It is estimated that the states will have to spend hundreds of thousands of dollars in start up funds to replace the industry lost to this amendment.

Prison industries has long been a source of revenue to the state corrections systems. These programs are also essential to reducing inmate idleness; providing training, skills, and improved chances of employment upon release; and providing monies with which the offender can assist his family in the community. The Chief Justice of the Supreme Court has often spoken out on the need to make our prisons into factories where constructive skills can be learned and useful goods manufactured. Unless markets can be developed, prison industries can never become industrious.

The needs of state and local corrections are great and there is an understandable turning to the Federal Government for leadership and assistance. The Federal Government's role of leadership can best be exerted through continued support of training, technical assistance, information sharing, and program/policy development.

Webster has defined leadership as "showing the way."

We at the National Institute of Corrections feel we can "show the way" through noncoercive, but very responsive programs—responsive to the needs of state and local corrections. With continued Congressional support, we promise such responsiveness.

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Prepared Statement of L. Cary Bittick, Executive Director, National Sheriffs' Association

INTRODUCTION

Chairman Kastenmeier and distinguished subcommittee members: my name is L. Cary Bittick and I hold the position of executive director of the National Sheriffs' Association (NSA), an association with over 50,000 members. The NSA represents the Sheriffs of our country who have the responsibility for operating the overwhelming majority of our Nation's 3,493 jails. On any given day, it is estimated that in excess of 158,000 men and women are incarcerated in these jails.

This is one-third of the total U.S. incarcerated population. In any one year, about 4 to 5 million citizens pass through our local jails. Over the past decade much attention has been focused on conditions that exist in some of these jails as a result of antiquated facilities, overcrowding and inadequate staff, to mention a few reasons.

Typical of many jails, the population it serves is relatively untouched by human service programs or outside community support. Moneys are not usually readily available for programs, renovations, or maintenance of the physical plant.

Concern is for the lock-up of inmates and security, rather than for the gradual easement and reintegration to the community for the offender population. It is a long established fact that jails have been among the lowest priorities for funding since the days when John Howard inherited the jail at Befordshire in 1773. There is in too many instances a reluctance on the part of the public to spend scarce dollars on projects that have a low priority among citizens of the community.

MOVE TOWARD JAIL REFORM

Sheriffs and jail administrators now find their operations undergoing the same type of scrutiny that policy organizations underwent in the 1960's. Solutions to the national jail crisis bear some resemblance to the events that impacted heavily on police operations and quickly gathered steam to propel change in the years that followed. In retrospect, one can point to:

1. The President's commission on law enforcement which drafted standards.
2. The organization of LEAA which offered financial aid.
3. The updating and modernizing of police facilities.
4. Scrutiny by the courts of police performance.
5. State mandated training standards.
6. Implementation of over diversion type programs.

Jails for too long have been considered the "step child" of the criminal justice system but are now going through the same professional growing pains. This growth is being nurtured in part by:

1. Court scrutiny of jail operations and practices.
2. Federally funded programs.
3. Development of standards.
4. A national movement to professionalize performance.
5. Selection of professional jail administrators.
6. Emphasis on training and education for jail administrators and staff.

THE STATE OF OUR NATION'S JAILS—1982

A nationwide survey of jails conducted by the National Sheriffs' Association entitled "The State of Our Nation's Jails—1982" proved to be the largest and most comprehensive study on jails in the history of the association. Much of the data will not surprise sheriffs and jail administrators who have known for a long time that in too many instances the states of our Nation's jails can be compared to ships foundering on the beach at low tide.

The categories of inquiry covered such areas as legal; administrative; physical description of present jail; staffing; inmate population; programs and services; and the five most serious problem areas in the jail in order of their importance.

In every category cited, it quickly becomes evident that jails lack both physical and human resources. Today, many non-jail experts have suggested that overcrowding is the biggest problem, when in fact overcrowding is clearly the symptom of the problem, not the problem itself. The overcrowding problem is often times defined as "the sheriff's problem" when it should be addressed in the broader context to include all the components of the county and state criminal justice system. This would include the police, judges, district attorney, public defender, parole and probation and State correctional systems.

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Consider the advice of Murry and Balty, writing in the November 1982 issue of American County Magazine.

"In the most cases, it is a mistake to assume that the 'jail' problem is a problem associated with the jail itself. County jail administrators have no control over the number or types of individuals who enter jails, how long offenders will be incarcerated. Most of the problems usually associated with county jails are a direct function of the laws, policies and procedures external to the jail itself." These * * * "have a more direct effect on the overcrowding of county jails than can be compensated for by massive jail construction programs."

"The solution to the jail dilemma, therefore, has more to do with changes in the administration of justice external to the jail than reform of the jail itself. In many cases it is far less expensive and more practical to reform laws, policies, and procedures affecting jail populations than it is to construct new jails. Massive jail construction programs initiated in response to overcrowding of existing facilities resulting from inadequate administration of the criminal justice system, are wasteful and a misuse of tax dollars."

In concluding the article, the authors state:

"In conclusion, the best solution to overcrowded jails is not necessarily jail construction. Many counties will find that an intelligent review of the criminal justice system and alternatives to incarceration will yield longer lasting and less expensive solutions to the jail problem. The worst mistake would be to build a new jail facility and subsequently realize that it is a monument to inefficient planning."

The "State of Our Nation's Jails" survey makes it abundantly clear that the number one problem is personnel (calculated from an over 2,664 responses). Many of comments penned to the questionnaire explained that personnel difficulties span a range which touches on the lack of jail training, inadquate salaries, and heavy staff turnover due to lack of career incentive programs.

Modernization ranked second and showed that many jails are still antiquated, poorly ventilated, substandard structures which cannot meet minimal standards in fire protection, food services, health, and sanitation. Tied to this is recreation, which ranked fourth behind overcrowding as a major problem. All too often, the questionnaires reported no indoor or outdoor recreation, one of the major factors in court suits. Some who have space outside are unable to utilize it because of staff shortages. Funding ranked in the top five categories as one might expect since it is only through monetary resources that dramatic changes occur in the personnel and modernization areas.

Thirty-seven different kinds of problems were cited. One should not assume that sheriffs and jail administrators feel these problems are relatively minor. Quite the contrary. Other parts of the questionnaire indicated deficiencies in security, medical service, training, visitation, programs, salary scales, and housing the mentally ill, juveniles, and females.

NEED FOR DIVERSIONARY PROGRAMS

Jails traditionally have a two-fold function. It is a place for the temporary detention of the unconvicted and a confinement facility where convicted persons, predominately misdemeanants, serve out their sentences. But the fact remains that jails in too many instances are used as a dumping ground for the social misfits of a community, the mentally ill, the alcoholic, the narcotic addicts and the runaway juvenile to mention a few, because the police have no other resource and the jail is the simplest, most available alternative. Jails are ill-equipped to handle people that fall into these categories. The fact that they must be accepted into jail is an indictment of the community which permits it because of its failure to develop alternative means of handling these persons.

Those jails particularly in the national jail survey were asked the following questions:

OVERALL RESPONSE

Answer	Number	Percent
Is there a detox center in the community?		
Yes	1,001	37.6
No	1,277	47.9
No answer	386	14.5
Do you have programs that provide alternatives to incarceration?		
Yes	1,055	39.6

OVERALL RESPONSE—Continued

Answer	Number	Percent
No	1,198	45.0
No answer	411	15.4

The smaller the jail the less likely it will have detox services available or alternatives to incarceration. We see it as a community problem requiring cooperation from its leadership. It is up to the sheriff and jail administrator to take the first step and solicit this cooperation. The sheriff is in an advantageous position to do this since a majority of the voting public placed him in office. Sheriffs often feel that there is no support in the community for things seen as helping the jail. It is the sheriff's responsibility to the public to convince the voters that improvements such as alternatives to incarceration or detox centers can only benefit the public. To salvage even one alcoholic will save the community tax dollars. We realize that to deal effectively with the public inebriate, a detox center is only a small part of a system of care which would have to include transportation services, shelters, extended care, domiciliary care, housing, support, and job training.

OVERALL RESPONSE

Answer	Number	Percent
Are juveniles separated from adults?		
Yes	1,955	73.4
No	67	2.5
No answer	642	24.1

COMMENT

The question should have read "separated by sight and sound." The fact that most jails do separate juveniles from adults cannot be argued against. What is badly needed is more commitment from the communities to house their juveniles in institutions separate from the jail as it now required in a few of the States.

OVERALL RESPONSE

Answer	Number	Percent
Do you routinely handle inmates presenting special problems with:		
Alcohol abuse	615	23.1
Drug abuse	1,610	60.4
Mental illness/retarded	1,385	52.0
Suicidal	1,086	40.8
Juvenile	1,115	41.9
Homosexuality	822	30.9

The replies to this question make it clear that the jail is the repository for the social misfits of the community. The answer to the alcohol and drug abuse items suggest that the inebriated person is handled so often by jail staff that people in this category are not viewed as presenting special problems—the jails actually receive far more people under the influence of alcohol than who are under the influence of drugs.

Not enough progress has been made in keeping mentally ill people out of jail and jail officers are often called upon to function as psychiatric aides. If the communities in their wisdom decide that jails instead of mental hospitals are the place for the mentally ill, they have some obligation to see that jail officers get a requisite amount of training in handling these people.

"Jails have become the receptacle of society's problems. They are always open and they have very few entrance requirements." (Coughlin writing in American County, November 1982.)

Many of these bookings might be avoided if other alternatives were available. The National Sheriffs' Association wants to reinforce the truism to which sheriffs have subscribed for over 40 years, that the alcoholic, the mentally ill, and the juvenile do not belong in jail.

The NSA endorses programs that maximize the use of good alternatives to incarceration for offenders who, if released, would not represent a threat to the community. The underlying strategy being to remove an offender from the community and incapacitate him in terms of his ability to commit crime.

It is our feeling that many counties have yet to maximize the use of good alternatives to incarceration for offenders. Part of this ties in with many jurisdictions still requiring cash bond for release to a private bondsman, something which discriminates against those without funds. There are still too many counties where the courts and attorneys involved with prosecution and defense of the incarcerated overlook or give low priority to this problem. The community is not well served because it contributes to overcrowding—people remain in the jail for weeks if they can't make a small cash bond. It costs the community money to board these inmates and it perpetuates a double standard of justice.

Jails should be used to:

(1) To maintain control and custody of hard core recidivists who threaten the safety of the community.

(2) To punish convicted persons; particularly serious offenders.

(3) Deterrence—to deter other members of society from similar acts, and, with respect to the offender, to provide sufficient threat of punishment so that he or she is deterred from future unlawful conduct.

A large part of the jail population is coming and going on a daily basis. This makes it difficult to carry out the type of programs in jails that will provide for the resocialization of offenders to the extent that a solution is provided to the increasing community crime problems. Jails must provide medical, educational, and employment aid, together with programs that deal with the overwhelming problems for offenders caused by alcoholism, drug abuse, and social alienation. (National Advisory Commission on Criminal Justice Standards and Goals, 1973.) Because a large number of jail inmates are incarcerated for a short period of time it is necessary to implement the type of programs that utilize the resources of community agencies to make sure that those offenders who have participated in short-term programs in the jail continue to receive help upon returning to the community.

It is important, especially for persons arrested for the first time, to be classified on intake so they can be steered toward a resource that can address the problem that led to their arrest. This is not done often enough. The first offender is more likely to be amenable to change, for at this time the experience of being jailed is most frightening. Subsequent periods of confinement become easier to cope with. This is especially true for the alcoholic, drug user and social deviant.

NEED FOR NEW JAIL CONSTRUCTION

Sheriffs understand only too well that in the 1980's, jails which operate according to law will have to meet mandated standards. They understand, too, that this is simply not possible if the physical plant of the jail is a horrible, outdated facility operated by too few jail officers at the lowest possible price. The biggest problem they have faced in promoting improvement in jail operation can be summed up in two words: Community neglect! It was true in the past and it is true today. In many ways it has been the community neglect which has caused the national jail crisis, triggered over a decade ago when the courts of our country began to demand that the jails be operated according to minimal constitutional standards.

For a good many years, sheriffs have told those who would listen that we must put money into the jail if we are to avoid fire and health hazards. The keynote speaker at the 1977 national assembly on the jail crisis pointed out that, next to the police, the Nation's jails deal with the largest number of people who come into contact with the criminal justice system. Logically, then, it follows that jails should receive a large share of criminal justice resources to work out solutions to their problems and improve conditions for inmates, but this has not happened. The speaker noted that because few people actually are concerned about the jail or will assume responsibility for its operation, the problems eventually will need to be resolved by the courts. Courts, however, are only equipped to handle the most severe and immediate problems, such as overcrowding or lack of medical care. Thus, the problems facing the Nation's jails today involve those who come into the system, the development of good alternatives to placing so many people in jail, and the need for dramatic changes in the public's attitudes about who should be jailed.

One of the major challenges faced by public officials for the remainder of the 20th century is to convince the general public that it must accept the responsibility for this Nation's jails and assume the task of momentous change after 200 years of neglect.

Unfortunately, many of the ill-advised, talk in terms of new jail construction as if the sheriffs were advocating building the inmates luxurious hotels. These people forgot that the jail staff works inside the facility at jobs where the stress level is high and where unhealthful, overcrowded, and dilapidated facilities affect staff health and attitudes. The turn over in jail personnel in these facilities far surpasses that in other segments of the criminal justice system.

I am sure that most sheriffs would never contend that a new or renovated jail facility will solve all the problems of confinement, but serious problems will continue to plague that jail operation if the building fails to meet health, fire, and building standards. This in fact can be the Achilles heel of a well managed jail. Nor would sheriffs insist on new Jail construction if renovating the older facility would suffice to meet contemporary, constitutional standards.

Court decisions have forced some improvement in living conditions, but for the most part, the conditions remain the same, local officials have lacked the money, the knowledge or the desire to correct the conditions. for whatever reason, the fact remains that funds have not been forthcoming to create lasting changes in the operations of jails that are substandard, and there are a number of substandard jails still being operated. Administrators responding to the national jail survey were asked to identify the date their jail was built and their responses revealed the follows:

Overall response—date jail built:
108 Jails were built in the 1980's.
640 Jails were built in the 1970's.
390 Jails were built in the 1960's.
276 Jails were built in the 1950's.
85 Jails were built in the 1940's.
264 Jails were built in the 1930's.
151 Jails were built in the 1920's.
110 Jails were built in the 1910's.
87 Jails were built in the 1900's.
86 Jails were built in the 1890's.
56 Jails were built in the 1880's.
56 Jails were built in the 1870's.
19 Jails were built in the 1860's.
20 Jails were built in the 1850's.
4 Jails were built in the 1840's.
8 Jails were built in the 1830's.
4 Jails were built in the 1820's.
2 Jails were built in the 1810's.
7 Jails were built in the 1800's.

Overall, 612 jails which were built between 1900 and 1940 still operate. Of these old jails 262 originated in the 19th century. It is a small wonder that so many sheriffs and jail administrators listed modernization as a major problem.

The National Sheriffs' Association wants to go on record as identifying with the need for new jail construction in situations where new jails are needed to allow them to conform to constitutional standard.

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PREPARED STATEMENT OF DONALD MURRAY, DIRECTOR, CRIMINAL JUSTICE PROGRAM, NATIONAL ASSOCIATION OF COUNTIES RESEARCH FOUNDATION ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES BEFORE THE HOUSE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

Chairman Kastenmeier and distinguished members of the subcommittee, I am pleased to have been invited to testify this morning on behalf of the National Association of Counties[1] on the intergovernmental dimensions of the correctional crisis in our country.

Before I begin, I wish to compliment the Chairman and the subcommittee for convening these important hearings on the relationships between Federal, State and local governments concerning correctional policies. It is a subject that rarely receives any national attention.

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[1] NACO is the only national organization representing county government in America. Its membership includes urban, suburban and rural counties joined together for the common purpose of strengthening county government to meet the needs of all Americans. By virtue of a county's membership, all its elected and appointed officials become participants in an organization dedicated to the following goals: Improving county government; serving as the national spokesman for county government, acting as a liaison between the Nation's counties and other levels of government, and achieving public understanding of the role of counties in the federal system.

Mr. Chairman, the individual and joint problems facing Federal, State and local governments point toward a glaring omission in efforts for corrections reform: little attention has been paid to intergovernmental solutions. Indeed, almost all of the major national studies on criminal justice during the last decade, including the 1982 report of the Attorney General's Task Force on Violent Crime and the 1973 report of the National Advisory Commission on Criminal Justice Standards and goals, have omitted any serious examination of the role and potential benefits of intergovernmental relations in corrections reform. The one exception is a study now in progress by the Advisory Commission on Intergovernmental Relations (ACIR) which examines the intergovernmental aspects of the jail crisis. The ACIR is conducting this study at NACO's request under a grant from the National Institute of Corrections. It should be finalized later this year and we believe it will shed much light on this long neglected area.

Despite this almost complete neglect of intergovernmental issues, there can be little question that most aspects of the criminal justice system affecting corrections are inherently intergovernmental.

Most misdemeanants and felons are sentenced under State statutes by State and local judges. Before trial, they are often held in city-run lockups or county-run jails. At the same time, some 45 States are directly involved in jail operations through the enactment of jail standards. Moreover, many problems inherited by local correctional agencies relate to the delivery of health and social services which are also intergovernmental in nature and require coordination among Federal, State and local agencies.

The Federal courts, as this committee is well aware, are also actively and very directly involved in State and local corrections in two major ways: Through the enforcement of constitutional protections and through rendering decisions on alleged human rights violations under section 1983 of the Civil Rights Act of 1871. In addition, both States and the Federal Government have increasingly utilized local jails to house State and Federal inmates. The administration in its recent budget request has projected that in fiscal year 1984, 54,500 unsentenced Federal prisoners will be boarded in approximately 680 jails; while at last count, on any given day 8,576 State inmates were backed up in local jails.

It is against this intergovernmental backdrop that major answers to the corrections crisis must be found. NACO firmly recognizes that it is only in the context of an intergovernmental framework that rational and long-range solutions to the jail and prison crisis in our country can be found—solutions to jail and prison overcrowding, substandard conditions of confinement, the lack of alternatives to incarceration, the widespread disparity in sentencing, the back-up of State inmates in local jails, the growing pressures of housing Federal inmates; and above all, the serious absence of comprehensive planning and partnership arrangements between State and county governments.

In his annual year-end report last month on the U.S. legal system, Chief Justice Warren E. Burger observed that "correctional policy, particularly during times of rapidly increasing prisoner populations and prison overcrowding, can no longer remain confined to one level of government or one segment of society * * * State, local and Federal authorities must focus on these problems in concert [and] develop a national correctional policy to deal with them."

JAIL REFORM—AN INTERGOVERNMENTAL CHALLENGE

Jail reform is the number one criminal justice priority for NACO's Criminal Justice and Public Safety Steering Committee and in recent years, NACO has focused considerable attention on the jail crisis. In cooperation with 30 national organizations, NACO has sponsored three national assemblies on the jail crisis and has taken an active role in the development of the very successful national coalition for jail reform.

Every year as many as 6.2 million people are processed through county jails—17 times the number sentenced to State or Federal prison: Many could be released or diverted safely through effective pretrial or alternative programs. The National Sheriffs' Association, in their well documented study, the "State of Our Nations Jails—1982," found an average 61.1 percent of jail inmates have not even been convicted of a crime and that the average length of detention for pretrial defendants was 3.2 months.

In part, the jail is a yardstick of the inadequacies and breakdowns in a community's health and social service systems. Many thousands of jail inmates, such as public inebriates or the mentally ill, who have been released from State mental hospitals, are behind bars simply because adequate care is not available in the community. Yet these people are often housed in worse conditions than those faced by convicted felons serving time in State institutions. One out of every four jails is over 50 years old. Forty-four percent of these jails house less than 10 people; nearly 90 percent are without either educational or recreational facilities; two-thirds have only limited first-aid medical capability, and only half have the physical capacity to separate pretrial detainees from sentenced offenders. Amazingly, only five jails in the United States have been accredited by the Commission on Accreditation for Corrections.

Three important points need to be made here: First, the characteristics of jail populations are very different from those of prison populations, and research has shown that large numbers of jail inmates can be released safely through pretrial and community corrections programs.

Our second point is that studies have shown that additional jail space fills to and above capacity soon after it becomes available. In other words, building more jails has not solved the overcrowding problem and should not be expected to do so in the future.

Our third point relates to the prohibitive costs of confinement and the recognition that jails are a limited resource: Not only are the costs of building jails astronomical—often times upward of $50,000 per bed—but the operating costs are immense. To quote Allen Breed, Director of the National Institute of Corrections:

"We have all heard the astronomical costs of jail construction, but seldom are they presented with an economist's portrayal of actual expenditures over a 30-year period. When a legislative body decides to build, say, a $10 million new jail, it is committing the taxpayer of that jurisdiction to $160 million of correctional expenditures over the ensuing three decades. Construction is only 6 percent of the charge to taxpayers over 30 years. For every dollar of construction there will be $16 in operating costs."

A realistic approach to solving the jail crisis, we believe, is difficult but achievable, requiring expanded use of alternatives to incarceration, new and effective partnerships between State and county governments, better linkages between criminal justice and health and social service agencies; comprehensive systemwide planning; well-conceived sentencing guidelines, and funds to improve facilities.

A program of renovation and construction alone would only exacerbate our existing problems by unnecessarily promoting the expansion of jail populations as well as the high costs of incarceration.

A FEDERAL STRATEGY FOR PROMOTING STATE-COUNTY PARTNERSHIP PROGRAM

While NACO's Criminal Justice and Public Safety Steering Committee has indentified the jail crisis as its most critical problem, the committee has come to recognize that the jail is part of a larger system and that major systemwide reforms are badly needed. To put it differently, major solutions to the jail crisis, including the search for alternative sanctions in the community, will not be found by focusing only on the jail itself.

Unfortunately, these perceptions are by no means universal. The jail, all too often is viewed as a building rather than as a component of the local corrections system. Its relationship to corrections, to the judicial system, to law enforcement, and to other governmental systems operating in the community is widely ignored.

At NACO's third national assembly on the jail crisis, the major problems that were almost continuously identified were the fundamental lack of planning and management, and the need for intergovernmental partnership to foster these processes to occur.

Recognizing the jail as a scarce resource, as well as the need for intergovernmental reforms to spark improved correctional planning programs, NACO outlined on June 8, 1981, before the Senate Subcommittee on Criminal Law, a comprehensive strategy for Federal assistance. Let me briefly review those recommendations today. The subcommittee at the time was considering legislation introduced by Senator Dole, the Criminal Justice Construction Reform Act (S. 186), to provide Federal financial assistance for all types of criminal justice construction and renovation—including jails and prisons—with an authorization of $6.5 billion over a 7-year period.

NACO's proposal, in essence, sought to link population reductions and the development of alternative programs to the award of construction funds. The proposal recommended the establishment of local community corrections planning boards and the development of a comprehensive plan as a precondition for Federal funds. It also contained a population threshold and language to promote the sharing of correctional programs and facilities on a multi-county basis. Finally it called for the creation of a separate title in the act to "provide financial incentives to States to develop and implement community corrections programs in partnership with local government."

Instead of reviewing all of the specifics of NACO's proposal I have attached to my testimony a short outline entitled, "The Jail Reform Act of 1981" which describes its key provisions in more detail. Let me simply say in passing that as a condition for funds, for example, the act could require intergovernmental agreements in rural areas, the establishment of pretrial release and other community programs, and the diversion from jail of people accused of certain classes of offenses. We recognize that enabling legislation and/or revisions to the State criminal code may be required, but incentives for change contained in the act should provide the impetus for these changes. A clear demonstration of intent to make maximum use of alternatives and to reduce jail populations, was a fundamental requirement. NACO recognizes that a substantial number of those in jail could be better handled in community programs.

Although State investment has increased over the last several years, a substantial number of States still provide no financial assistance to counties in local adult corrections. Of those States that do provide financial aid to counties in local adult corrections the emphasis appears to be on subsidies to improve jail conditions and the services jails provide, although at least 7 States have targeted assistance for alternatives to incarceration. Federal legislation that provided incentive funding to States that developed in partnership with county governments community corrections legislation could in our judgment, substantially reduce unnecessary confinement if properly linked to well conceived sentencing guidelines.

Statewide community corrections programs, such as those that exist in Minnesota and Oregon, serve to promote multi-county programing but even more importantly they also support a planning process to manage and evaluate correctional resources at the local level.

THE BENEFITS OF STATE-COUNTY PARTNERSHIP

Comprehensive statewide community corrections programs offer both States and counties a major solution to the problems of overcrowding and substandard conditions in prisons and jails. The growing interest at the State and local levels in finding some way out of the ever-increasing costs of building and operating correctional facilities can motivate States and counties to form a partnership to improve their systems.

In such States as Minnesota, Oregon, and Kansas the local planning boards established under their legislation, promotes communication and planning and provide a mechanism for expanding, coordinating and evaluating new and innovative services in the community. At the same time population requirements encourage the development of multi-county systems to promote expanded services in rural areas.

Inherent in the practice of community corrections is the recognition that the community is the best place to deal with the criminal behavior of less serious offenders and that county governments and their communities are best equipped to design and operate the types of programs suited to their communities. States that have implemented comprehensive programs have taken this concept one step further: They acknowledge that corrections is a State and local responsibility to which both levels of government can contribute their resources. States provide subsidies and technical assistance to counties, set standards for corrections programs, and approve and coordinate programs statewide. Counties take over responsibility to plan, coordinate, expand, and administer their own programs.

State economical assistance is critical. Most counties have little flexibility to raise substantial funds. They face severe fiscal constraints, whether through voter-initiated property tax limits or demands for service outstripping revenue source capability. Because local taxing authority is typically limited to property taxes and service fees, counties need financial assistance to pay the initial short-term additional costs of developing comprehensive community corrections alternatives to incarceration. Because the bulk of the more than $2 billion counties spend on corrections is tied to institutional programs, community corrections programs will require additional resources until counties can better reallocate their own existing resources.

At NACO's annual convention last July new policy was adopted for incorporation in the American County Platform recommending a linkage between community corrections legislation and a unique type of sentencing guidelines now operating only in the State of Minnesota, although similar approaches are now being developed in the States of Washington and South Carolina. (The only major departure in our policy is that whereas the Minnesota sentencing guidelines apply only to adult felony populations, NACO would expand the concept to cover serious misdemeanants as well.)

Without going into elaborate detail, one of the most unique features of the guidelines is that they are predesigned to keep the prison population at a desired level as determined by the State legislature, This is accomplished through actuarial predictions of annual convictions in relation to available beds.

Unlike determinate sentencing approaches which primarily deals with only the question of how long people should be imprisoned, the Minnesota guidelines set forth a presumption for who should go to prison as well as for how long based on criminal history and the severity of offense.

To quote Malcolm Feeley and Lloyd Ohlin:

"The objective is to reserve the prison facilities for offenders who have committed serious crimes or have lengthy criminal records. As population reaches capacity, the guidelines force sentencing courts to make more careful choices among those who require imprisonment and those who could be controlled or punished by other types of penalties, This kind of cap on prison population is more likely to work effectively where a State-subsidized local community corrections program is also in operation to provide other alternative sanctions for the courts to us."

A recent evaluation of sentencing practices during the first year of the guidelines, produced impressive results;

Prison populations remained within State correctional capacity during 1980 and 1981. Commitments were close to the level projected.

Sentencing practices have substantially conformed to the articulated sentencing policy. There has been a 73 percent increase in imprisonment of offenders convicted on high severity crimes with low criminal histories. There has been a 72 percent reduction in imprisonment for offenders convicted of low severity crimes with moderate to high criminal histories.

Disparity in sentencing has decreased under the sentencing guidelines * * * sentences are more uniform in terms of who goes to prison and in how long imprisoned offenders serve. Sentences are more proportional in that offenders convicted or more serious offense receive more severe sanctions than prior to the sentencing guidelines,

It is NACO's expectation that if similar guidelines covered serious misdemeanor populations even more impressive results would occur in terms of lowering and better managing jail populations,

Well conceived sentencing guidelines coupled with statewide comprehensive community corrections programs appears to be our best hope. We simply do not have the money to build our way out of the jail crisis.

RECOMMENDATIONS

What should the Federal Government do to promote intergovernmental reforms in corrections?

1. Developing corrections reform legislation:

Recognizing that the correctional crisis affecting local, State, and the Federal Government in both a national and an intergovernmental problem—involving an overreliance on incarceration particularly at the State and local level—NACO recommends Federal legislation which would stimulate community corrections programs between State and local governments.

Such legislation should provide financial incentives to State governments to develop comprehensive community corrections legislation in partnership with local governments.

Federal incentives should be flexible enough to allow for individual State and local differences, and not penalize any State that had already instituted such programs.

To qualify for incentive funding State legislation should contain certain essential features such as language calling for the creation of local planning boards at the country or multi-county requirements for the development of a comprehensive plan, requirements relative to the enactment and enforcement of State standards and population requirements to encourage multi-county programing.

Construction funds should also be made available on a matching basis but only after the jurisdiction(s) in question and maximized their efforts to reduce jail and/or prison populations,

Mr. Chairman, the stimulation of State and local effort through Federal financial incentives in certainly not a new idea and would in all likelihood create a multiplier effect in terms of generating additional revenues from State and local governments. The committee may recall that when Congress provided incentive funds in the seventy's to States that adopted model alcoholism legislation decriminalizing public drunkenness it produced very positive results in a very short period of time.

2. Expand research and demonstration programs: The Federal Government should expand its efforts to support national research in this vital area.

3. Support training and technical assistance: The National Institute of Corrections with a budget of only $11 million has done an outstanding job in providing training research and technical assistance to county governments in corrections. The Federal Governments' continued support of NIC is absolutely essential.

Mr. Chairman, I appreciate the opportunity to make these comments and recommendations.

TITLE: "THE JAIL REFORM ACT OF 1981"

Eligibility

(a) Population requirement: A single county with a population of 30,000 or more or a group of contiguous counties with an aggregate population of 30,000 or more.

(b) Corrections advisory board: Basic to the Act is the requirement that participating counties must establish a corrections advisory board. This board must be representative of law enforcement, prosecution and defense attorneys, the judiciary, education, corrections, racial minorities, social welfare services and lay citizens. If two or more counties come together for purposes of implementing a joint corrections program, membership is shared among the counties at the discretion of the joint county boards. The advisory board is actively involved in the development of a local comprehensive plan and in reviewing the progress being made. In addition, the board is expected to provide the coordination which is needed to make an expanded community corrections systems a reality.

(c) Comprehensive plan: The local comprehensive plan identifies correctional needs and defines the programs and services necessary to meet these needs. This plan is developed by the corrections advisory board and presented to the board of county commissioners for final adoption. The plan identifies existing community services, agencies and resources, analyzes the local criminal justice system and other related systems that impact on the jail. The plan shall provide an analysis of the jail population, address inappropriate confinement and specify how the county or group of counties plans to reduce jail populations to a minimum and to make maximum use of community alternatives to incarceration. The plan:

Provides satisfactory emphasis on the development and operation of community-based corrections facilities and programs, including pretrial release services, halfway houses, probation, restitution, community service and work release programs;

Provides for advanced techniques in the design of institutions and facilities;

Provides, where feasible and desirable, for the sharing of correctional programs and facilities on a multi-county basis; and

Provides satisfactory assurances that the personnel training standards and programs of the institutions and facilities will reflect advanced practices.

(d) Funding:

1. The Act should contain language which would provide financial incentives to states to develop and implement community corrections programs in partnership with local government.

2. Provides adequate funding for construction or renovation with a 50 percent Federal match.

PLATFORM AMENDMENT

State-County Partnership Programs for Community Corrections

NACO supports State-county partnership programs which foster local comprehensive planning and provide a range of community alternatives to incarceration for less serious felony and misdemeanant populations. State governments should assist counties in this process by providing a stable source of financial and technical assistance. Partnership programs should emphasize the role of the private sector and encourage, wherever feasible, the systematic sharing of resources on a multi-county basis. Inherent in the practice of community corrections is the recognition that the community is the best place to deal with the behavior of less serious offenders and that county governments are uniquely able to coordinate, collaborate, and provide administrative leadership and oversight in developing programs suited for their communities.

Linking Sentencing Guidelines to Community Corrections

In order to reduce sentencing disparities, eliminate unnecessary confinement, establish more rational and appropriate sentencing policies, and, in general, better manage limited correctional resources—including jails and prisons, NACO supports the development and enactment of rational and uniform statewide sentencing guidelines which are tied to comprehensive community corrections legislation and legislatively predetermined population maximums at both the state and local level. Such sentencing recommendations should set fixed presumptive terms for felony and serious misdemeanant populations, indicating who should go to jail or prison, or be placed in alternative community programs and for how long. The guidelines should be based on an appropriate combination of offense and offender characteristics and allow judges to depart from the sentencing guidelines only in exceptional cases, when they can provide written reasons explaining why the sentence chosen is more appropriate or more equitable than that provided in the guidelines. A very thorough and rigorous monitoring system should be established.

Reproduced from U.S. General Accounting Office. Report to the Congress by the Comptroller General of the United States. Washington, G.A.O., 1980. p. i-v.

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

DEPARTMENT OF JUSTICE CAN DO MORE TO HELP IMPROVE CONDITIONS AT STATE AND LOCAL CORRECTIONAL FACILITIES

DIGEST

Unsafe, insanitary conditions in many State prisons and local jails endanger the health and well-being of inmates, correctional staff, and visitors.

Although inadequate funding has been a significant cause of these conditions, improvements involve more than increased funding. Correctional institutions need adequate maintenance programs, trained personnel, and inspection programs which can detect deficiencies and ensure that they are corrected.

The responsibility for improving conditions at State and local correctional facilities rests primarily with State and local governments, and some are making improvements. Officials making changes recognize their responsibilities but, at the same time, see the need for increased Federal participation.

Safety and sanitation, sometimes referred to as environmental health, include areas such as fire prevention, food preparation and storage, accident prevention, hygiene, temperature and light levels, pest control, and air quality.

ENVIRONMENTAL DEFICIENCIES

Federal and State courts have found that many State and local correctional institutions violate protections afforded by the Constitution as well as State laws. Courts have ruled that substandard conditions can constitute "cruel and unusual punishment." Court intervention can improve conditions, but relying on it to identify and remedy substandard conditions on a widespread basis has serious drawbacks.

State and local inspection agencies frequently have found deficiencies in prisons and jails. Some deficiencies they have noted: leaking, inoperative plumbing; bedding made from materials which generate toxic smoke when on fire; inadequate ventilation, lighting, and heating; inoperative, unreliable locks; exposed electrical wiring; dirty, peeling floors and walls; inadequate fire safety training; missing or inoperative smoke and fire detection and control systems; no second means of exit; and cross-connections of potable water supplies to sewage lines.

Inspection agencies have not been effective in obtaining improvements. Further, correctional institution staffs frequently have lacked the necessary training to contribute to institutional safety and sanitation. GAO visited 46 prisons and jails in 6 States and found many of the deficiencies noted by inspection agencies. (See Ch. 2.)

THE DEPARTMENT OF JUSTICE COULD OFFER MORE ASSISTANCE

Five Department of Justice agencies are involved with conditions in prisons and jails--the Civil Rights Division, the Marshals Service, the Bureau of Prisons, the Law Enforcement Assistance Administration, and the National Institute of Corrections.

The Attorney General, through the Civil Rights Division, investigates complaints about violations of inmate constitutional rights. The recently enacted Civil Rights of Institutionalized Persons Act provides the Attorney General explicit authority to initiate or intervene in civil actions to secure inmate rights. The legislation requires the Attorney General, before initiating such action, to advise State and local officials of actions he believes would remedy conditions and of the Federal assistance available. The Civil Rights Division could provide advice and assistance not only to institutions with deficiencies severe enough to warrant civil action, but also to other institutions needing help. (See p. 23.)

Inspectors from the Marshals Service, the only Federal agency with an extensive jail inspection program, visit and provide technical assistance to about 800 jails under contract to the Service. This inspection system has some deficiencies, but if they are corrected, the Service could do much to assist State and local jail administrators and inspectors. (See p. 25.)

The Bureau of Prisons has much experience dealing with environmental health problems in a correctional environment and has much to share with State and local officials, but until now, the Bureau's technical assistance has not been safety and sanitation oriented. (See p. 28.)

The Law Enforcement Assistance Administration provides financial and technical support to State and local criminal justice systems, but few of its efforts have addressed safety and sanitation problems. It supports the development of correctional institution standards and encourages compliance with them. However, for the most part, these standards give limited consideration to safety and sanitation and little specific guidance on how to implement the standards. The Law Enforcement Assistance Administration could show its support for improving conditions and serve an important function if it sponsored the development of maintenance standards and specific guidelines on implementing environmental health-related standards. (See p. 29.)

The National Institute of Corrections, a small Federal agency devoted to improving the corrections system in this country, has sponsored a series of fire safety training programs for corrections officials. This program, however, reaches a small number of officials annually. The Institute could expand its training to other environmental health issues. Additionally, the Institute could disseminate information on maintenance and materials obtained from a number of Federal agencies with experience in facility operation or with the expertise to develop performance standards and test materials for acceptability. (See p. 31.)

RECOMMENDATIONS

GAO recommends that the Attorney General examine the Department of Justice's approach for dealing with safety and sanitation deficiencies in State and local prisons and jails and develop a strategy for assisting in the improvement of environmental health conditions. As part of this strategy, the Attorney General should:

--Expand the role of the Civil Rights Division so that it assists troubled institutions desiring assistance in solving environmental health problems, even though the conditions encountered do not warrant civil action.

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- --Upgrade the Marshals Service's jail inspection services program, by including better training, using its resources and expertise to assist jail administrators and inspectors in improving their effectiveness, and exploring the possibilities of increased coordination and cooperation with State and local inspection agencies.

- --Direct the Bureau of Prisons to work with the National Institute of Corrections to set up a mechanism for disseminating information on its environmental health experiences to correctional officials at all types of institutions and for opening more Bureau training to State and local officials.

- --Encourage and assist State and local officials to develop maintenance programs by directing LEAA to support the development of maintenance standards to be used as models by correctional officials and of detailed guidelines which will assist administrators in implementing plans to meet the standards.

- --Establish a program within the National Institute of Corrections for disseminating information regarding equipment and materials suitable for correctional facilities. This information could be obtained from the Bureau of Prisons and other Federal agencies with knowledge of maintenance, equipment, and materials, such as the Bureau of Standards, the Department of Defense, and the General Services Administration.

- --Encourage the National Institute of Corrections to expand its environmental health training programs to reach a larger number of correctional officials and include a wider range of safety and sanitation programs. This program should utilize available State and local agencies involved with health, fire safety, and occupational safety, as well as Federal organizations with such expertise, including the U.S. Fire Administration

AGENCY COMMENTS

The Department of Justice agreed that many State and local prisons and jails have unsafe and insanitary conditions. Although the Department expressed concern about the availability of resources, it said a concerted effort will be made to assist States and localities in improving conditions in their correctional facilities. (See app. I.)

The Department also said that all of its affected agencies agreed to maintain a close working interrelationship and to develop coordinated strategies.

In addition, the individual agencies plan to provide the following assistance to States and localities in response to GAO's recommendations.

--The Civil Rights Division will use the Civil Rights of Institutionalized Persons Act as a vehicle for systematically providing prospective defendants with information concerning available sources of Federal assistance which may aid in correcting violations of the law.

--The Marshals Service is developing programs to provide training, technical and financial assistance, and excess Federal property to substandard jails with which it contracts to house Federal prisoners.

--The National Institute of Corrections plans to continue providing technical assistance and training to States for the purposes of developing, revising, implementing, or monitoring environmental standards.

--The Bureau of Prisons, in conjunction with the Institute, will continue inviting State representatives to its Environmental Health and Safety Course for Correctional Institutions and will continue participating in the Institute's assistance programs.

Reproduced from Home confinement: an evolving sanction in the Federal criminal justice system, by Paul J. Hofer and Barbara S. Meierhoefer. Washington, Federal Judicial Center, 1987. p. v-vi, 1-3, 5-11.

FOREWORD

Concern with crime is both intense and widespread. The public is deeply disturbed by the perceived inability of the law, and more specifically the judicial process and the corrections system, to deter crime. One result has been increased interest in sentencing policy and purposes. The Congress, in the effort to be responsive, established the United States Sentencing Commission, whose guidelines currently await congressional consideration. Understandably, they have generated considerable controversy. In the view of many, the answer lies in greater severity of punishment. Current projections of prison population in the federal system warn us to expect increases of major proportions. The Sentencing Commission itself, ascribing much of the cause to recently enacted legislation designed to curb drug abuse, predicts dramatic increases in prison population within a relatively short period of time.

The fact is, however, that it is simply not possible sharply to increase the number of prisoners without substantial increases in the funds necessary to provide for them. Prisons and beds for prisoners do not come cheap. Institutions must be staffed and guards must be paid. Yet, it is far from clear that in these days of budgetary constraint our society is willing to pay for increased imprisonment. In this climate, and for other reasons more closely related to sentencing goals, there has been substantial interest in home confinement as a viable alternative to institutional incarceration.

Some experimentation with home confinement is already taking place in the federal system; pilot programs are in place from the Western District of Virginia to the District of Arizona. Under the leadership of Judge Warren K. Urbom, the District of Nebraska has been in the forefront of such experimentation. At last count, that court was responsible for over half the federal cases in which home confinement was imposed as a condition of probation.

What is needed at the present time is a sharing of information, a clear statement of the policy issues that must be considered, and a careful canvas of the practicalities—the specific terms and conditions that ultimately make for success or failure of any such innovation. The present study, suggested to us by Judge Urbom, is intended to help meet those needs.

A. Leo Levin

I. INTRODUCTION

Of the many responsibilities that fall to judges, the sentencing of criminal offenders is among the most challenging, controversial, and troubling. Few issues cut so deeply to the foundations of the criminal law—the meaning of responsibility and the protection of society. Tensions between individualized versus uniform sanctions for criminal behavior, and between intuitive versus explicit reasoning in justifying sanctions, guarantee that the search for consensus in sentencing will be a formidable task.

This is an especially important time for the development of sentencing policy. The United States Sentencing Commission has developed guidelines that will significantly structure judicial discretion and may dramatically alter sentencing policy in the federal courts. Sentences have always reflected a combination of multiple, in some cases contradictory, purposes. The new guidelines do not eliminate the conflicts among retributive, rehabilitative, and social control theories of criminal sanctions, but they do alter the mix of these purposes in the rationale underlying federal sentences.

This report seeks to place the evolving sentencing option of home confinement—also known as house arrest or home detention, and closely related to intensive supervision on probation—within the larger framework of sentencing policy. The emphasis is on description and evaluation, based on the currently available research and literature, and on our own interviews with those who have developed and implemented home confinement in the federal system. Many of the choices that confront probation officers and judges in designing home confinement programs or imposing individual sentences are reviewed.

Technological developments independent of the law—such as electronic-monitoring devices—are making their own contribution to sentencing policy, especially with regard to the use of home confinement. They have excited considerable public and commercial interest. Companies now offer a variety of monitoring tools: from automatic dialers and voice verification systems that periodically call offenders' homes to confirm they are there, to miniature radio transmitters worn by offenders that emit a signal over a 200-foot radius which can be detected by receivers placed in offenders' homes. One company offers a video phone that transmits a still picture of whoever answers the intermittent checkup calls.[1] We need a careful and discriminating evaluation of how these devices comport with the purposes of sentencing. Without such an evaluation, judicial practice, like medical or financial practice, could become increasingly driven by technological advances outside its control.

We begin this analysis by defining three terms used throughout the report to differentiate among the types of home confinement. We then review the current status of home confinement in the state and federal systems and present an overview of why such sentences are becoming more prevalent. Next we describe a number of programs now in place, focusing on the variations to consider in developing a home confinement program. We also look at how home confinement fits within traditional sentencing models and examine its success at accomplishing various sentencing goals. We propose research into a number of critical empirical issues. Finally, we review the impact of the proposed federal sentencing guidelines on the availability of home confinement as an option in the federal system.

Many of the issues surrounding home confinement do not turn on questions of empirical facts but on questions of moral and political values. The most common public image of "house arrest"—as a form of political oppression found in totalitarian regimes—illustrates the importance of the values and the intensity of the emotions that home confinement can engender (as well as the importance of defining terms and choosing words carefully).[2] Fears that the criminal justice system will fail to use home confinement responsibly may be exaggerated, and recent cries of "Orwellian nightmare", raised by the growth of electronic monitoring only add to the heat. But there can be no doubt that important values and rights are implicated by this sentencing option. And although empirical research can describe the effects of house arrest, the fundamental decisions concerning its proper place within a sentencing system are essentially ethical choices. We seek to inform those choices with the best analysis and empirical findings available.

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[1] So far radio devices are capable only of detecting if offenders leave home; they cannot be used to track all their movements. They do not tell us where offenders go, only whether they remain within the approximately 150-foot radius of the receivers. One company does offer a portable receiver that can be placed in a probation officer's car. It can detect the offender's presence within an approximately one-block radius of wherever the receiver is transported. Transmitters that emit signals over a larger area, permitting offenders to be tracked throughout a city, are under development. We do not yet confront the questions of privacy and dignity raised by such devices, though many have voiced concern that the current generation of monitors is opening the door to later generations of more intrusive devices.

[2] Some program developers have attempted to dissociate their programs from this repressive image by avoiding certain terminology. For example, the U.S. District Court for the District of Columbia calls its program RIPS, for residential intensive probation supervision. Florida's state program is known as "community control." We dislike the term "house arrest" not only because it is impolitic but also because it is inaccurate. "Arrest" generally refers to a form of police action without judicial process. Almost all offenders confined to their homes in the United States today have received due process and have been convicted of crimes. (The exceptions are the few pretrial detainees.) Nor is home confinement used for political repression in the United States. (Unfortunately, one of the first and most widely reported sentences of home confinement was imposed in a "political" trial—that of draft resister and nonregistrant David Wayte, who was sentenced to six months in the home of his grandmother.)

II. WHAT IS HOME CONFINEMENT?

Introduction

Throughout this report, we use the general term *home confinement* to apply to any judicially or administratively imposed condition requiring an offender to remain in his or her residence for any portion of the day. Although home confinement is commonly conceived as part of a judicially imposed initial sentence, it can also be a condition of pretrial release, a condition of parole or other supervised early release from prison, or a sanction for probation or parole violators.

Home confinement can range from nighttime curfew conditions, to detention during all nonworking hours, to continuous twenty-four-hour-a-day incarceration. Enforcement techniques can range from random, intermittent contacts by a supervising officer to continuous electronic monitoring. There are obvious differences in the control of the offender afforded along this range of options, as well as in the punitiveness of the sentence. These differences should be captured in the terminology one uses to describe the types of home confinement.[3] As there is no clear consensus among jurists and scholars on the definition of terms, we propose the following typology.[4] This nomenclature is used throughout the report.

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3. The new sentencing guidelines of the U.S. Sentencing Commission, *infra* note 92, at commentary following sec. SF5.2, define the term *home detention* to mean "a program of confinement and supervision that restricts the defendant to his place of residence *continuously or during specified hours*, enforced by appropriate means of surveillance by the probation office. . . . If the confinement is only during specified hours, the defendant shall engage exclusively in gainful employment, community service or treatment during non-residential hours." (Emphasis added.) The commission's use of the term *home detention* includes both off-work confinement and twenty-four-hour-a-day incarceration. We prefer to use *home confinement* as a broader term including both restriction during specified hours and continuous confinement. The latter we call *home incarceration*. Using *home detention* for the broader term leaves us no concise way to make the substantive distinction between continuous confinement and limited confinement during specified hours.

4. Lilly and Ball, early advocates of home confinement programs, have recently proposed the same distinctions among confinement, curfew, detention, and incarceration that we develop below. *See* Lilly & Ball, *A Brief History of Home Confinement and House Arrest*, 13 N. Ky. L. Rev. 343-74 (1987).

Curfew

Curfew is a type of home confinement that requires offenders to be at their residence during limited, specified hours, generally at night. Such a condition is a common component of intensive supervision programs. It is the heart of the curfew release program recently implemented by the U.S. Parole Commission and the Federal Bureau of Prisons, in cooperation with the federal probation system. Programs including curfew vary widely in the strictness of supervision, though most call for more officer–client contacts than required under normal probation. Many require participation in treatment, training, or drug testing; payment of fees, fines, or restitution; and community service.

Home Detention

More severe than curfew, home detention requires that offenders remain at home at all times, except for employment, education, treatment, or other times specified for the purchase of food or for medical emergencies.[5] The offenders' freedom to go where they please is completely restricted, though they may remain employed, go to treatment programs, and continue to support their families and pay fees or restitution. Free time must be spent at home. Home detention, if strictly enforced, is more punishing than curfew and affords greater control over an offender's activities.

Home Incarceration

Incarceration at home is the most severe form of home confinement; the home substitutes for prison. Offenders are to remain there at all times with very limited exceptions (e.g., religious services or medical treatment). Under this condition, offenders are precluded from shopping, from working, or from having visitors outside prescribed hours. In some cases offenders may not even be allowed to go outside into their yards. The goal is to punish and maintain control over the offender. In the words of the developer of an early home incarceration program, "We're not sending them home to have a good time."[6]

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[5] See United States v. Murphy, 108 F.R.D. 437 (1985), for an early example of a home detention sentence in the federal system.

[6] Carl Hopkins, Contra Costa County, Calif., probation officer, quoted in *No Place Like Home*, 14 Crim. Just. Newsl. 3 (1983).

Origins of Home Confinement

Home confinement is not an entirely new criminal sanction. Curfews have long been imposed on juveniles and, to a lesser extent, on adult probationers and parolees. Other restrictions on mobility—such as restrictions on place of residence and prohibitions against frequenting undesirable locations or leaving the jurisdiction—are well-established options available to judges for tailoring community-based sentences to the offender. The traditional purposes to be served by these restrictions have been the same as those for community supervision in general: facilitate supervision of the offender and increase the chances for successful rehabilitation by encouraging good behavior.

The new interest in home confinement has been kindled because it is seen as a distinct sentencing alternative, different from both incarceration in prison and "straight" probation, and capable of promoting additional penal goals. Although the need for alternative sentences has long been recognized, a convergence of recent concerns and developments has increased the demand for new options. There has been mounting public pressure to get tough with crime. Recent reports suggesting that traditional probation does not afford sufficient protection to the community have disturbed the criminal justice community.[7] Prison overcrowding confronts correctional officials at the same time that fiscal restraint is demanded. Prison is now commonly recognized as failing as a rehabilitative sanction. Victims' rights organizations have encouraged the reemergence of victim restitution as an important sentencing objective.

The appeal of home confinement is that it seems to meet many of these pressing concerns. It brings community placement—long thought to be an aspect of rehabilitation—within the framework of justice and punishment models of sentencing.[8] Home confinement may substitute as a cost-effective alternative to imprisonment for punishment and deterrence. If supervision or monitoring of offenders sentenced to home confinement is greater than that of regular probationers or parolees, then home confinement may afford greater protection of the community. Improvements in the technology of monitoring lead many to believe that restrictions on offenders' movement in the community could now be given real punch. If the level of confinement is short of home incarceration (i.e., offenders are permitted to leave home to work), offenders can be productive, tax-paying members of society (and perhaps pay for their own supervision). They can also perform community service and earn money to pay restitution. There is less disruption of the family, and the offender can support dependents and/or provide child care. The drain on welfare and foster child systems is thereby reduced. In addition, community educational and treatment resources are available to help rehabilitate the offender.

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[7] *See* J. Petersilia, Granting Felons Probation: Public Risks and Alternatives (Rand Corp. 1985). This study found that two-thirds of a sample of 1,700 granted probation in California were rearrested in the three years following sentencing.

[8] *See generally* Thomson, *Prospects for Justice Model Probation*, in P. D. McAnany et al. (eds.), Probation and Justice: Reconsideration of Mission (Oelgeschlager, Gunn & Hain 1984).

For these reasons, home confinement appeals to many as an intermediate sentencing alternative. Sentences of home confinement can be tailored to satisfy simultaneously many of the multiple goals of criminal sanctions. A combination of strictly enforced confinement and the imposition of fines, restitution, and community service can be fashioned to punish and deter in proportion to the seriousness of the crime. Careful monitoring can significantly incapacitate the offender and protect the public. Mandatory training, treatment, and testing can help change the life-styles that lead to further crime. We return to an analysis of how various sentencing purposes can be advanced by home confinement in a later section. Before we hail home confinement as a panacea, we must take a hard look at what we know about it and what we still need to find out.

Status of Home Confinement Programs

State Programs

The state courts have taken the lead in exploring home confinement. At least forty-two states had or were planning programs as of fall 1985.[9] Florida has the largest program, with almost eighteen thousand people confined to their homes over the past three years.[10] Georgia was the first to impose significant curfews on offenders in its large intensive supervision program, begun in 1982. More than half of the thirty-one state intensive supervision programs surveyed in 1986 included curfew as a component, requiring offenders to be home during specified times of the day, typically 10:00 p.m. to 6:00 a.m.[11]

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[9] Petersilia, *Exploring the Option of House Arrest*, 50 Fed. Probation 50 (1986) (reporting the results of a Rand Corp. mail survey).

[10] *Community Control "House Arrest": A Three-Year Longitudinal Report* (Florida Department of Corrections, Probation and Parole Services, January 1987) [hereinafter Florida Report].

Most of the state programs, though still relatively new, are considered successful by their developers. Empirical evaluation studies are under way in several states, but for now we must rely on the opinions of those with firsthand experience with the programs. By and large, home confinement has created a very favorable impression; the number of programs continues to expand dramatically, as does the size of existing ones. Programs have often accomplished important sentencing goals.

But the success has not been universal. Contra Costa County, California, has discontinued its program even though most observers felt it showed encouraging results in its first year. The problem was one increasingly typical of home confinement programs: They are not as large as initially projected. Judges remain reluctant to take risks with an innovative sentence. Probation officers are concerned that failures will irreparably damage the reputation of the home confinement option. They are extremely cautious in recommending people for the sentence. Offenders decline to apply to programs that may keep them under surveillance for more time than they would serve in prison. Many offenders do not have a suitable home or a job, typical prerequisites.

There is widespread agreement that a home confinement sentence is most successful when it is given within the framework of a well-defined program developed by probation and law enforcement officers, along with the judiciary. Florida's program resulted from intensive preparation and training of judges, law enforcement personnel, and the public. Policy manuals for probation officers, catalogs of community service and treatment resources for judges, and press releases for the public were all prepared as part of a highly coordinated effort to win acceptance of the program. New Jersey's success in winning acceptance for its large-scale intensive supervision program resulted from early and continuing participation by the judiciary and by prison and law enforcement officials.

Since the costs of creating full-scale home confinement policies and procedures can be substantial, sophisticated program development will pay only if there is significant use of the option once it is in place. In Contra Costa County, the program attained only 15 percent of the originally anticipated beds-per-day reduction in the local jail. With such low utilization, the program—though considered successful for the offenders supervised—was judged to be more costly during its initial year than imprisonment of the offenders would have been.[12]

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[11] Byrne, *The Control Controversy: A Preliminary Examination of Intensive Probation Supervision Programs in the United States*, 50 Fed. Probation 4 (1986).

Federal Programs

The largest home confinement program in the federal system is curfew parole, a cooperative arrangement among the Bureau of Prisons, the Parole Commission, and the federal probation system. Under the program, in effect since March 1986, parolees are supervised under a curfew in lieu of serving the last sixty days of their sentence in a community treatment center. As of February 20, 1987, 1,108 parolees had been released on curfew parole.

In addition to this nationwide program, an experimental program featuring electronic monitoring of prison releasees in lieu of placement in community treatment centers is in the planning stages in two pilot districts, the Southern District of Florida and the Central District of California. In California, parolees will be placed in home detention for the final four months of their imprisonment. All will be required to work full-time and to participate in drug treatment and testing, vocational training, and counseling when deemed appropriate.[13]

The use of home confinement as an "up-front" sentencing option in the federal system is much less common. In early 1986, within one month of each other, judges in the Central District of California and the Eastern District of New York imposed it as a condition of probation. In New York, the sentence was the first in an explicit program developed by the probation office. Seven other districts have followed with explicit home confinement programs: the Southern District of Florida, Western District of Virginia, District of Arizona, District of Nebraska, District of the District of Columbia, Western District of Missouri, and Eastern District of Wisconsin. At least one other, the Northern District of California, will soon inaugurate a program. In addition, the condition is being imposed on a case-by-case basis in at least two other courts: the Northern District of West Virginia and Southern District of Texas. With the exception of one district's program, all of the federal programs are designed to use home confinement in lieu of prison. The programs are meant to divert offenders from prison, not to widen the net of surveillance and control for people who would otherwise get probation. Only the Eastern District of Wisconsin explicitly designed its program to apply both to those who would ordinarily receive short terms in prison and to those who would ordinarily get long terms of probation. Most of the federal programs fall into the category of home detention. Three districts, however, have had offenders serving more restrictive terms of home incarceration.[14]

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[12] End of Project Report, Contra Costa County Adult Home Detention Program (April 1985)

[13] R. M. Latta, Statement of Work: Home Detention Project (Mar. 6, 1987)

The Eastern District of Wisconsin has a two-stage program. The first stage consists of home detention, while the second is a less restrictive curfew program that applies to curfew parolees as well as to probationers. Successful adjustment to stage 1 for six months is a requirement for probationers to progress to stage 2. The regular six-month case review process is the administrative vehicle used to determine whether a modification to stage 2 is appropriate.

Federal judges have used home confinement as a condition of probation sparingly. At last systematic count, there were only sixty-five cases in the entire federal system.[15] More than half of these were in a single district—the District of Nebraska. Aside from a few sentence innovators, judges remain largely unfamiliar with the rationale and potential of this new sanction. Some may also be uncomfortable with its repressive implications or leery of its ability to control offenders. Probation officers in a handful of districts have taken the initiative and approached judges with recommendations of programs or home confinement sentences for particular offenders. But probation office staffing levels have not been adjusted to take account of this option, and general policies and procedures have not yet been promulgated. One probation officer, reviewing evidence of the growing use of home confinement, has asked, "Are we ready?"[16]

To understand better the potential of home confinement, a description of the decisions that arise and program elements available in developing home confinement as a federal sanction may be helpful. Developers must decide on procedures and criteria for selecting offenders, the type of monitoring desired, the method of enforcement, and other conditions to be combined with home confinement. They must find ways to pay for the intensive offender supervision required to enforce home confinement. The next chapters describe approaches found in existent programs or proposed in the literature.

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[14] They are the Middle District of Florida, District of the District of Columbia, and Northern District of West Virginia.

[15] Fitzsimons, *Home Detention in the U.S. Probation System*, News & Views, Feb. 23, 1987, at 8. These numbers do not reflect home confinement sentences imposed outside of the officially established programs. It is not possible to determine the actual total because the Administrative Office of the U.S. Courts has only recently begun to collect data on imposition of these sentences.

[16] Muttart, *House Arrest: Are We Ready?*, News & Views, Jan. 12, 1987, at 4.

U.S. Department of Justice
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CRIME FILE
Study Guide

James K. Stewart, Director

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House Arrest

by Joan Petersilia, The Rand Corporation

What Is House Arrest and Why Is It So Popular?

As prison crowding worsens, the pressure to divert nondangerous offenders to community-based alternatives has increased. Since it is generally agreed that the public is in no mood to coddle criminals, such alternatives must be tough and punitive and not compromise public safety. House arrest sentencing is seen by many as meeting these criteria.

House arrest is a sentence imposed by the court in which offenders are legally ordered to remain confined in their own residences. They are usually allowed to leave their residences only for medical reasons and employment. They may also be required to perform community service or to pay victim restitution or probation supervision fees. In at least 20 States, "electronic bracelets" are being used to detect violations of house arrest.

While the goal of "house arrest" is easily understood—to restrict freedom—the mechanisms used to confine an offender to his home vary considerably. Typically, offenders participating in Intensive Probation Supervision programs are required to be in their residences during evening hours and on weekends. House arrest programs of this type now exist in Georgia, New Jersey, and Illinois.

Moderator: James Q. Wilson, Collins Professor of Management,
University of California, Los Angeles

Guests: Alvin Bronstein, National Prison Project, American Civil Liberties Union
Leonard Flynn, Florida Department of Corrections
Joan Petersilia, The Rand Corporation

House arrest programs have been established in many States. They are seen by advocates as an intermediate form of punishment that could bring some relief to prison crowding problems and be a positive force in rehabilitation of offenders. House arrest's critics fear that house arrest programs may result in reduced efforts to rehabilitate offenders and in increased intrusions on civil liberties.

In some instances, curfews are added to the offender's court-ordered parole or probation conditions. While curfews permit individual freedom in the community except for particular hours, more intrusive home incarceration programs restrict the offender's freedom in all but court-approved limited activities. These more intrusive programs now exist in Kentucky, Utah, Michigan, Oregon, and California. Several have been modeled on the house arrest program operated by the State of Florida.

Florida's Community Control Program

Florida's house arrest program, known as "Community Control," was established in 1983 to help alleviate prison crowding in the State. It is the most ambitious program of its type in the country, with about 5,000 offenders "locked up" in their homes on any one day. Leonard Flynn, a panelist on this Crime File segment, oversees the program's operations for the Florida Department of Corrections.

Florida's program targets "incarceration-bound" offenders including misdemeanants and felons. Each offender is supervised by a community control officer, whose primary function is to ensure that the offender is adhering to court-ordered house arrest restrictions. The community control officer works nights and weekends to monitor compliance. For the more serious offenders, an electronic monitoring system is used. This system operates by having a central computer randomly telephone the offender during designated hours. The offender responds to the telephone call by placing a receiving module (contained in a watch-like wristband) into a modem. The computer verifies the action via a remote printer.

Offenders are permitted to leave their residences only for court-approved employment, rehabilitation, or community service activities. Participants must pay monthly supervision fees of $30 to $50 to offset the costs of supervision.

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pay restitution to victims, and provide for their own and their family's support.

Officials in Florida consider the house arrest program to be a resounding success. Since 70 percent of those 10,000 persons were believed likely to have been sent to prison otherwise, real cost savings have been realized. In Florida, it costs about $3 per day to supervise a house arrest offender, compared with $28 per day for imprisonment.

Florida's success, coupled with the intense pressure that nearly every State is feeling to reduce prison commitments, ensures that interest in house arrest will continue to grow. An additional impetus is provided by manufacturers of electronic monitoring equipment, who promote their products as a means to achieve public safety without incurring exorbitant costs. Consequently, it is important to consider the major advantages and disadvantages of house arrest programs as well as the larger conceptual issues that such sentencing practices raise.

Advantages of House Arrest

Cost effectiveness. The surge of interest in house arrest programs has come primarily from their financial appeal. House arrest (particularly without electronic monitoring) is thought to be highly cost effective. If the offender was truly prison bound, then the State saves not only the yearly cost of housing the offender (on average about $10,000 to $15,000 per year) but also reduces the pressure to build new prisons (at about $50,000 per bed).

If electronic monitoring equipment is used, house arrest is not as cost effective. The equipment is currently quite expensive. For instance, Kentucky spent $32,000 for 20 electronic devices, and Albuquerque, New Mexico, paid $100,000 for its first 25 monitor/bracelet sets.

However, manufacturers argue that such figures are misleading, since they reflect high "startup" costs that will decline as usage increases. Manufacturers also say that it is misleading to look only at the system's direct costs. Most house arrest programs require the offender to be employed. Such offenders continue to pay taxes and may be required to make restitution payments and pay probation supervision fees. Moreover, offenders can continue to support their families, saving the State possible welfare expenditures.

We do not now have sufficient information to compute the actual costs of house arrest programs. Nationwide figures show that house arrest programs without electronic monitoring cost anywhere from $1,500 to $7,000 per offender per year. House arrest with electronic monitoring costs $2,500 to $8,000. But these operational costs do not include the cost of processing any recidivists. According to recent estimates, the cost averages $2,500 for each recidivist rearrested and processed.

At this point we know that administering house arrest costs less than confinement in either State or local facilities, but the indirect costs that such programs entail have not been quantified.

This program brought to you by the National Institute of Justice, James K. Stewart, Director. The series produced through a grant to the Police Foundation.

Social benefits. Most advocates believe that house arrest programs are "socially cost effective." A defendant who had a job before he was convicted can keep it during and after house arrest. By preventing the breakup of the family and family networks, house arrest can also prevent psychological and physical disruptions that may have lasting effects on the offender, the spouse, the children, and even the next generation.

Furthermore, house arrest has none of the corrupting or stigmatizing effects associated with prison. This is a particular advantage for first offenders who may not yet be committed to a life of crime. They will not come under the influence of career criminals or be exposed to the physical or sexual assaults of prison inmates. Keeping offenders from the criminogenic effects of prison was one of the major reasons Oregon and Kentucky officials devised house arrest programs for drunken drivers.

Most of those operating house arrest programs view the foregoing as an important advantage. While prisons are not designed to scar inmates psychologically, many believe this happens. If it does, avoiding this psychological damage is a desirable social goal, especially for young, inexperienced, or first-time offenders. If we could devise a sentence that would make such emotional scars less likely or less common without compromising public safety, surely it would be preferred.

Responsiveness to local and offender needs. House arrest is flexible. It can be used as a sole sanction or as part of a package of sentencing conditions. It can be used at almost any point in the criminal justice process—as a diversion before an offender experiences any jail time, after a short term in jail, after a prison term (usually joined with work release), or as a condition for probation or parole.

House arrest can also be used to cover particular times of the day, or particular types of offenders. This is an attractive option for controlling offenders who are situationally dangerous. The drunk driver, the alcoholic who becomes assaultive in a bar, and the addict may all be likely candidates for house arrest.

House arrest also has potential applications for offenders with special needs—such as the terminally ill and the mentally retarded. For example, Connecticut is exploring use of house arrest for pregnant offenders. Another program includes an AIDS victim whose needs cannot be met in jail. Several States are developing programs for elderly offenders.

Implementation ease and timeliness. Pressure to reduce prison crowding is immediate, and jurisdictions are looking for alternatives that can be developed quickly. Because house arrest sentencing requires no new facilities and can use existing probation personnel, it is one of the easier programs to implement (particularly if no electronic monitoring devices are used). House arrest programs, for the most part, do not require legislative changes and can be set up by administrative decisions. The conditions of house arrest are usually easy to communicate, facilitating implementation.

Policymakers also like the notion that the offender can be removed from the community quickly, at the first sign of misbehavior. House arrestees are usually on some type of suspended jail or prison sentence; the suspension can be revoked quickly and the offenders incarcerated if they fail to meet house arrest requirements. The "suspended sentence" status makes the process of revocation much simpler

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and faster than if the offender were simply on probation or parole.

Advocates of house arrest believe that the sentence is worth trying because it is less intrusive and less expensive than prison. But house arrest is not without critics.

Disadvantages of House Arrest

House arrest may widen the net of social control. Nonviolent and low-risk offenders are prime candidates for house arrest; these offenders are least likely to have been sentenced to prison in the first place. As judges become more familiar with house arrest, they may well use it for defendants who would normally have been sentenced to routine probation with nominal supervision. Hence, a sentence originally intended to reduce crowding might instead "widen the net" of social control without reducing prison and jail populations significantly. Alternatively, house arrest may be used as an "add on" to the sentence the judge would normally have imposed, thus lengthening the total time the offender is under criminal sanction.

In the long run, "widening of the net" with house arrest programs is a realistic possibility. If we begin to regard homes as potential prisons, capacity is, for all practical purposes, unlimited. Such possibilities have widespread social implications.

Alvin Bronstein, head of the American Civil Liberties Union's National Prison Project says: "We should be looking for ways to place fewer controls on minor offenders, not more. If these devices are used as alternatives to jail, then maybe there's no problem with them. If you're sending the same people to jail and putting people who otherwise would be on probation on them, it's a misuse. We're cautiously concerned."

If house arrest does widen the net of social control, it will have increased, rather than decreased, the total cost of criminal sanctions. However, some net-widening may be appropriate in some jurisdictions. One cannot assume that all offenders—particularly felons being supervised by overworked probation staff—are receiving supervision commensurate with the risk they pose to the community.

House arrest may narrow the net of social control. Some critics of house arrest are concerned that a sentence of house arrest is not sufficiently severe to constitute an appropriate punishment for many crimes. In many States, house arrest programs are intended for use as punishment in lieu of prison. If that intention is realized, some critics argue that the result will be, in effect, to depreciate the seriousness with which crimes are treated. Mothers Against Drunk Driving (MADD) has been particularly critical of house arrest for drunk drivers and sees such sentencing as a step backward for efforts to stiffen penalties. *Drunk drivers are frequent house arrest participants.* The lessened severity of punishment, in theory, may reduce the criminal law's deterrent effects. In addition, critics could argue, because some offenders will commit new offenses while on house arrest, the crime preventive effects that prison sentences achieve by incapacitation will not take place.

House arrest focuses primarily on offender surveillance. Some worry that house arrest, particularly if implemented with electronic devices, will strike the final blow to the rehabilitative ideal. As probation officers focus more heavily on surveillance of offenders, human contact is reduced and the potential for helping offenders is diminished. Most probation officers monitoring house arrest participants admit they have little time for counseling.

Although the research evidence does not urge optimism about the rehabilitative effects of probation officers' efforts, many believe that it is important that humane efforts be made, and be seen to be made, to reform offenders.

While it is true that counseling is reduced in most house arrest programs, employment or enrollment in school is often required. It could be argued that having a job or a high school diplome may do more than counseling to reduce the long-term prospects of recidivism.

House arrest is intrusive and possibly illegal. Some critics object to the state's presence in individuals' homes, long regarded as the one place where privacy is guaranteed and government intrusion is severely restricted by law. The use of electronic devices raises the fear that we may be headed toward the type of society described in George Orwell's book, *1984*. In *1984*, citizens' language and movement are strictly monitored and used as tools of government oppression.

But house arrest, with or without electronics, is quite different from the *1984* scenario. House arrest is used as a criminal sentence and is imposed on offenders only after they have been legally convicted. It is imposed with full consent of the participant. And, indeed, its intent is to be used as an *alternative* to incarceration. Surely a prison cell is more intrusive than any house arrest program can be.

There have been no formal challenges to date concerning the legality of house arrest. But legal analyses prepared by officials in Utah and Florida conclude that house arrest, with or without electronic monitoring, will withstand constitutional challenges as long as it is imposed to protect society or rehabilitate the offender, and the conditions set forth are clear, reasonable, and constitutional.

Race and class bias may enter into participant selection. Because house arrest programs are in the experimental stage, administrators are extremely cautious in selecting participants. Most programs limit participation to offenders convicted of property crimes, who have minor criminal records and no history of drug abuse. Such strict screening makes it difficult to identify eligible offenders, and those who are eligible tend disproportionately to be white-collar offenders.

American Civil Liberties Union officials say the programs also discriminate against the young and the poor because, to qualify for most house arrest programs, a person generally needs to be able to pay a supervision fee, typically $15 to $50 a month. If electronic monitors are used, the fee is higher, and the offender needs to have a home and a telephone. Persons without these resources may have no alternative but prison.

This situation raises possible "equal protection" concerns and concerns about overall fairness. Some programs have instituted sliding scale fee schedules, and a few others provide telephones for offenders who do not have them.

House arrest compromises public safety. Some critics seriously question whether house arrest programs can adequately protect the public. Regardless of stringency, most advocates admit that house arrest cannot guarantee crime-free living, since the sanction relies for the most part on the offender's willingness to comply. Can a criminal really be trusted to refrain from further crime if allowed to remain in his home?

To date, both recidivism and escape rates for house arrest participants are quite low. Generally less than 25 percent of participants fail to complete the programs successfully. But the low rates result, in part, from such programs' selection of good risks. Eligibility requirements often exclude drug addicts and violent offenders. Profiles of house arrestees show that most have been convicted of relatively minor offenses. Such offenders have lower than normal recidivism rates, with or without the house arrest program. Without a controlled scientific experiment, it is impossible to know whether house arrest programs themselves or the characteristics of participants account for initial success. As house arrest sentencing becomes more widespread and is extended to other types of offenders, the public safety question will undoubtedly resurface.

On the Need To Proceed Cautiously

The evolution and performance of house arrest sentencing invite close scrutiny. Such sentencing represents a critical and potentially far-reaching experiment in U.S. sentencing policy. If successful, house arrest could provide a much needed "intermediate" form of punishment. If unsuccessful, house arrest could lead to more punitive and expensive sanctions for a wider spectrum of offenders. Which scenario proves true in the long run will depend on whether policymakers take the time to develop programs that reflect the needs and resources of local communities.

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Discussion Questions

1. What is house arrest sentencing, and why is it attracting the attention of criminal justice policymakers?

2. What are the principal advantages and disadvantages of sentencing convicted offenders to house arrest?

3. What is "net widening," and what are its possible effects on our criminal justice system?

4. Are neighborhoods being placed at risk when they serve as "community prisons"? What would your reaction be if house arrest programs were implemented in your neighborhood?

5. Most house arrest programs require that participants pay a "supervision fee" in order to offset some of the program costs. What are the pros and cons of this practice?

This study guide and the videotape, *House Arrest*, is one of 32 in the Crime File series of 28½-minute programs on critical criminal justice issues. They are available in VHS and Beta format, for $17 and in ¾-inch format for $23 (plus postage and handling). For information on how to obtain *House Arrest* and other Crime File videotapes, contact Crime File, National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850, or call 800–851–3420 or 301–251–5500.

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RESOLVED:
THAT THE FEDERAL GOVERNMENT SHOULD ADOPT A NATIONWIDE POLICY TO DECREASE OVERCROWDING IN PRISONS AND JAILS IN THE UNITED STATES.

WILLIAM F. WOLDMAN

The CRISIS in PRISON OVERCROWDING

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BACKGROUND

Experts agree that prison overcrowding is the most critical problem facing the criminal justice system today. Continued public pressure for harsher prison sentences has resulted in some States adopting mandatory minimum sentences, curtailing or eliminating parole, and tightening supervision and revocation proceedings for probationers; the result of each of these policies is that a given prisoner will be incarcerated for a longer period. By the end of 1984 more than 30 States were under court order to alleviate prison crowding. According to the Bureau of Justice Statistics, the Nation's State and Federal prison population grew by 6.1 percent during 1984 and consisted of 463,866 inmates.

Despite efforts to expand capacity and to institute more liberal release policies, the Nation's prison population continues to rise. The General Accounting Office (GAO) has forecast that by 1990 the national prison population will reach 566,170 (compared to 463,866 in 1984). This would be an all-time historic incarceration rate of 227 per 100,000 (compared to 188 per 100,000 in 1984).

According to studies prepared by the Justice Department, data from 1981 show that there are approximately 2.4 million adults and juveniles under public correctional supervision (primarily jails, prisons, detention centers, probation, and parole) on any given day. Approximately 72 percent of these offenders are supervised in the community under probation or parole. Figures on adult community supervision show an increase of 25 percent in offenders on probation and 12 percent in offenders on parole.

The prison population increased by 34 percent between 1979 and 1982. It is worth noting that while all types of adult corrections caseload, from jails and prisons to community supervision, have increased in recent years, greatest increases have occurred among prison populations.

Incarceration of prisoners is a major item in public budgets. In fiscal years 1982 and 1983, States allocated nearly $800 million to expand or improve prison capacity. An additional $2.2 billion was committed for prison construction through bond issues or other revenue mechanisms. Direct fiscal outlays for operating prisons exceeded $5.5 billion in FY 1983. This figure has more than tripled over the past decade. The magnitude of these costs, among other factors, has stimulated a search for alternative sentences other than incarceration that would alleviate prison overcrowding.

It can be argued that where non-violent, non-dangerous offenders are concerned, society's interests may be better served through the imposition of alternative sentences such as restitution and community service. The following are arguably among the potential benefits that might accrue to society from alternative sentencing:

(1) the prison overcrowding crisis would be immediately eased, while providing space for dangerous criminals;

(2) costs would be reduced;

(3) courts could impose punishments which are productive both for the victim and for the community and much less destructive to the offender; and

(4) rehabilitation of criminals would be promoted since those receiving alternative sentences have demonstrated lower recidivism rates than those sentenced to prison terms.

Congress addressed the relationship of sentencing to overcrowding in the "Sentencing Reform Act," which is Chapter II of the Comprehensive Crime Control Act of 1984 (P.L. 98-473). The Act established an independent United States Sentencing Commission and abolished parole in Federal crimes. By abolishing parole and concentrating authority to determine sentences in an independent commission, the Act allows uniform guidelines to be set to control the size and nature of the Federal prison population. Explicit incentives to reduce overcrowding are contained in the statutory guidance to the Sentencing Commission to consider the nature and capacity of available facilities, and to make recommendations with respect to expansion of facilities necessary to accomodate these guidelines. The Commission is specifically directed to develop guidelines to "minimize" the likelihood that the Federal prison population will exceed the capacity of the Federal prisons.

The Congress will have the opportunity to consider these guidelines and their implications for prison overcrowding when the Commission submits the guidelines to Congress for its approval.

STATE EXPERIENCE

Federal officials can draw on experience in the States which tend to use any of four strategies to deal with the prison crowding crisis. These strategies are: increasing prison capacity, selective incapacitation, population sensitive release policies, and "front door" techniques.

Increasing Prison Capacity

The traditional approach has been to increase the amount of available prison space through the construction of new facilities or the acquisition of surplus, primarily Federal, property. Construction is a less attractive option when State and Federal budgets are being reduced rather than expanded. Additionally, the amount of time it takes to plan, design, construct, and staff a new facility makes construction a long-term strategy. However, despite these difficulties, some States are in the process of expanding their capacity through new construction.

ALTERNATIVES to INCARCERATION

Selective Incapacitation

The second strategy, selective incapacitation, would identify "career criminals", or offenders who are at high risk of committing additional violent crimes, and would incarcerate them for long periods of time. Low-risk offenders would receive shorter sentences, thus using less prison space. This strategy responds to the public's demand for increased crime control while at the same time reducing prison populations. On the other hand, there is disagreement among criminal justice experts as to whether it is possible to identify those offenders who are most likely to commit future offenses if released to the community.

Population Sensitive Release Policies

The third strategy entails sentencing or release policies that are sensitive to changes in prison populations. Some States have enacted emergency release laws which require officials to reduce populations when a certain, predetermined number of inmates has been reached. Early release techniques might include early parole and half-way house provisions. Commutations and furloughs might also be used.

"Front Door Options"

A final strategy, and the focus of this article, involves so-called "front door" options that reduce the number of offenders admitted to prison. These options include State community corrections acts, restitution, community service orders, and various levels of probation supervision.

The purpose of these "front door" options is to eliminate incarceration completely or to use it for short or "shock sentences". Although most of these options have been used for some time, studies have found that there is increased emphasis on them today because of crowded prisons and limited budgets.

Community Corrections Acts

State community corrections acts encourage the development of locally operated corrections programs for nonviolent offenders. According to the American Correctional Association Task Force on Community Corrections Legislation, a community corrections act is a "statewide mechanism included in legislation whereby funds are granted to local units of government and community agencies to develop and deliver front end alternative sanctions in lieu of State incarceration." (Bobbie L. Husky, *Corrections Today*, Jan. 1986, p. 45)

The goals of community-based programs include establishing local sentencing options for certain offenders, increasing opportunities for offenders to make restitution or perform community service, encouraging local involvement in program development, and reducing costs below the annual per-inmate cost of incarceration. Community corrections legislation offers States the option of establishing reasonable, safe, and productive local alternatives to prison crowding or construction, which can be an integral part of a State's broader strategy to utilize limited prison resources.

Restitution

Restitution has been employed for several centuries as an alternative to incarceration. Restitution is a court-imposed sanction requiring the offender to make a payment of money or service to the crime victim. The National Institute of Justice sponsored research to learn more about restitution and has found the use of restitution to be gaining in importance as all levels of the criminal justice system cope with crowded prisons.

The Victim and Witness Protection Act of 1982 (P.L. 97-291) expanded the use of restitution by the Federal courts. Federal courts could impose restitution orders only when the sentencing court included them as a condition of probation. The 1982 Act requires the Federal courts to consider restitution as an additional sanction to any authorized disposition.

Some State restitution programs go beyond this to use restitution as an alternative to incarceration rather than as a supplement to existing sanctions. According to a study prepared by Eileen Garry for the National Institute of Justice, the State of Texas is encouraging the use of restitution as an alternative to incarceration in an effort to deal with its prison crowding problem. The Texas Adult Probation Commission recently awarded more than $1.6 million to 11 local adult probation departments interested in restitution centers. These are residential half-way houses where offenders live while working to pay back their victims.

The State's first restitution center was recently opened in Ft. Worth with 45 beds and estimated daily costs of approximately $28 per resident. Residents pay room and board on a sliding scale.

Georgia currently has 12 restitution/diversion centers that serve as alternatives to imprisonment. The program began in 1975 with one restitution center and has expanded as the State's prison population continues to grow. In each of these States, as well as others, offenders who would otherwise have been incarcerated, are under State supervision and are repaying their victims, at significantly lower cost to the State.

Community Service

Community service is another alternative sanction used by many courts. While restitution requires the offender to make a payment of money or service to the crime victim, community service is symbolic restitution paid to the community by the offender in the form of nonsalaried service for a specific time. The Garry study found that during the past decade hundreds of community service programs have been established as alternatives to imprisonment. As with restitution, the challenge for the judiciary in planning and implementing community service programs is to use them as true alternatives to incarceration, rather than just as additional sanctions. In Mississippi, the restitution and community service order programs accept only those offenders who have already been sentenced to prison, insuring that the programs are used as alternatives to incarceration.

Continued on page 30

Probation

Probation is a traditional method of keeping offenders in the community. In 1983, 62.2 percent of the adults under correctional supervision were on probation. It is by far the most widely used form of correctional supervision; probation costs are a fraction of incarceration costs. According to figures released by the Texas Adult Probation Commission, the 1982 daily operational costs for probation were $.98 per person compared with $12.11 for incarceration.

Intensively supervised probation is a variation on probation that is gaining in acceptance. While such programs are not new, the expectation of the programs has changed over the years. Previously these programs were not viewed as true alternatives to incarceration but as a slightly more restrictive form of community-based supervision. Today, the aim of most intensive supervision programs is to reduce prison crowding without endangering the safety of the community and a true alternative to incarceration.

In Georgia, the Intensive Probation Supervision (IPS) program is an important part of the State's effort to address the problem of prison crowding. The program provides the courts with alternatives, short of incarceration, for those offenders they feel can safely be supervised in the community. A team of two probation officers supervises a caseload of no more than 25 probationers, ensuring near-daily contact with the offenders. Program elements include:

Weekly staff/probationer contacts, ranging from a minimum of five times per week in the initial 3-month phase to twice per week in the final 6 to 12-month phase;

A minimum of 132 hours of community service;
Mandatory curfew;
Weekly check of local arrest records; and
Routine drug/alcohol screening.

The daily cost of this program is $4.75 per offender compared to prison costs of $24.61 and $.75 for regular probation. The program's operating costs are supported fully by probation fees of $10 to $50 per week which the employed probationer is charged to offset the cost of supervision.

According to Stephen Gettinger (Corrections Magazine, April 1983, p. 6-17), the primary appeal of the Georgia program is that it represents an opportunity to keep some offenders in the community under conditions that are strict and punitive, but that do not compromise public safety. New York, New Jersey, Texas, and Washington State also have operational intensive probation supervision programs.

The pressures of bulging prisons and scarce public funds may force government officials to reexamine the use of imprisonment versus other forms of social control. Judicial orders mandating reduced prison populations may provide incentives to employ non-incarcerative sanctions for certain classes of offenders. Various estimates place the number of non-violent offenders, currently incarcerated, who could benefit from alternative programs, without endangering public safety, at between 20 and 35 percent. These and other alternative strategies may provide [illegible] options in dealing with [illegible] critical issue.

William F. Woldman, [illegible] Analyst in [illegible] Government Division.

For additional reading see [illegible] no. 81171, Congressional Response to Prison [illegible]; CRS white paper, Sentencing Reform: Policy Considerations; Our Crowded Prisons, The Annals of the American Academy of Political and Social Science, Volume 478, March, 1985.

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Study Guide

James K. Stewart, Director

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Prison Crowding

by Alfred Blumstein, Carnegie-Mellon University

How Crowded Are Prisons?

Overcrowded prisons may be the most pressing problem facing the criminal justice system today. The number of prisoners in the United States has increased continuously since the early 1970's, and the rate of incarceration (the number of prisoners per capita) has doubled since 1970. By 1984, there were more than 463,000 people in State or Federal prisons, which is about 20 percent more than they were designed to accommodate. This represents one prisoner for every 500 persons in the United States. Another 220,000 people were in local jails. Most of these were being held awaiting trial, another large group were serving short sentences, generally under 1 year, for less serious crimes.

What Is Wrong With Crowded Prisons?

It is a widely accepted principle of prison management that a prison cell should not be used for more than one prisoner. The reason for this is obvious—people who are in prison have demonstrated a difficulty in getting along with others. A majority of prisoners either are serving time for a current violent crime or have a history of violent offenses.

Moderator: James Q. Wilson, Professor of Government, Harvard University

Guests: Alfred Blumstein, Carnegie-Mellon University
Mark Corrigan, Brandeis University, National Institute for Sentencing Alternatives
Thomas Reppetto, Citizens Crime Commission of New York

Your discussion will be assisted by understanding some of the factors contributing to the recent growth in prison populations and some of the approaches being considered for alleviating the crowding problems.

If a prison with 1,000 cells must accommodate 1,200 prisoners, then 400 of its prisoners will be housed two to a cell. Prison managers generally agree that when the prison population exceeds capacity their ability to manage the unruly population is seriously degraded. As the numbers of prisoners increase, the space normally used for recreation or education is diverted to dormitory use. Incidents of violence between prisoners increase, and control of the institution gradually slips to the most aggressive groups of prisoners. The exhaustion of services and the limitation on recreational activities further lead to tension, boredom, and conflict among the prisoners, and between the prisoners and the guards. Eventually, there is a degradation of morale among the staff, greater staff turnover, and a vicious circle of diminished control.

Overcrowding is also of obvious concern to the large majority of prisoners who, in effect, become subject to harsher punishment as a result of the crowded conditions. Indeed, unreasonable crowding is one of the most frequently used bases for declaring a particular prison's conditions in violation of the eighth amendment's prohibition against "cruel and unusual punishment." This concern was expressed by the Supreme Court in the *Rhodes v. Chapman* decision, when it permitted double celling, under circumstances in which the conditions were temporary, and the prison was exemplary in other ways.

The Purposes of Prison

While there is general agreement on the purposes of prison as a punishment for crime, there are strong disagreements on how broadly prison should be used. At one extreme are those who view prison as a last resort, to be used only for the most violent or incorrigible offenders, and after all other means of reform have been exhausted. At the other extreme are those who insist that any person convicted of a felony deserves harsh punishment, and that prison is appropriate in most cases.

Both groups thus recognize that prisons serve two purposes. One is punishment of the offender as an end in itself regardless of any effect that it might have in reducing future crime. The other is that of controlling crime

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Prisons work in three distinct ways to control crime. First, they serve a symbolic purpose in that they communicate to the public that they should not commit crimes because they, too, could be punished. This is known as *general deterrence*, the influence on everybody else of imprisoning a single offender.

The other two ways relate to the effect on imprisoned offenders themselves. The first of these relates to the *rehabilitation* of offenders or the reduction in their crime-committing propensity after release. That change may result from rehabilitation approaches such as counseling or enhancement of job skills. It may also occur simply because the prison experience is sufficiently unpleasant that offenders will avoid repeating it. Critics point out that, at least for some people, the prison experience may lead to more or worse crime; they view prison as a "graduate school for crime." Undoubtedly, both rehabilitation and deterioration occur; some people come out better and some people come out worse.

The third way prisons affect crime is through *incapacitation*. Removal of offenders from the community prevents them from committing crimes there. Some assaultive crimes may be transferred to prison. And some crimes—like drug sales—may persist in the community but be committed by someone else.

Thus, for those who are convicted, the prison serves a number of functions as part of society's response to crime. There is little debate over the purposes. There is some disagreement over their relative effectiveness, but research is beginning to resolve that question. There may even be general agreement on the ranking of convicted offenders in the order of those for whom prison is most appropriate. The major disagreement relates to how far down that list imprisonment should be imposed, and for how long.

Since there are many more eligible candidates for imprisonment than there is available capacity, prison is typically reserved for those who commit the most serious crimes or for those who are repeatedly convicted of less serious crimes that would normally lead to probation on the first or first few instances.

Factors Leading to Current Crowding

The current situation of prison crowding in the United States follows from the steady growth in prison population that began in the early 1970's. Until that time, there was a broad consensus that the primary purpose of imprisonment was "correction," that is, rehabilitation of the offender. Evaluations of a wide variety of techniques presumed to be rehabilitative failed to show any to be particularly effective. These results shattered the old consensus and led to a new consensus that changing behavior was extremely difficult. There was no agreement, however, on what to do next.

During the rehabilitation era, parole authorities were empowered to decide when a particular prisoner was "rehabilitated" and ready for release. This role was also well suited for accommodating increases in the inflow of prisoners.

This program brought to you by the National Institute of Justice. James K. Stewart, Director. The series produced by WETACOM through a grant to the Police Foundation.

Any release of any prisoner involves some degree of risk, and so marginal shifts in that risk are barely perceptible—especially in view of the considerable difficulty of estimating future criminality. Thus, when prisons became too crowded, the parole board could become somewhat more liberal in deciding whether an inmate was a good candidate for release. In this way, parole provided an important "safety valve" to adjust prison populations to their available capacity.

The mid-1970's saw a major reaction to this "indeterminate" sentencing system. Since rehabilitation services were not shown to be effective, it was argued that judgments about a prisoner's state of rehabilitation should no longer influence the length of time served. There came a general shift toward more "determinate" sentences, established by the judge at the time of sentencing, but often within the guidelines established by a legislature or a sentencing commission. The true sentence, as reflected in the time actually served, became more explicit and more public, and pressure grew to increase sentences in response to the public's concern over rising crime rates in the 1970's.

The changing age composition of the U.S. population has exacerbated the crowding problem. The number of people in their mid-20's, the ages at which people are most likely to be sent to prison, has grown steadily over the last 20 years. That increase reflects the population growth associated with the postwar baby boom, which started in 1947 and peaked in 1961. Thus, even if there had been no change in the fraction of each age group represented in prison, the larger numbers of people in the most prison-prone ages would still have crowded the prisons. This situation, together with the increasing severity of sentences, created the current dramatic increase in prison population.

Alternative Approaches to Relieving Prison Crowding

A major theme of the Crime File program concerns the variety of approaches one might use for dealing with overcrowding. Basically, there are only three: providing more capacity, diverting convicted people to sentences other than prison (the "front-door" approach), or shortening the time served in prison by those who do go there (the "back-door" approach).

Additional prison capacity would permit keeping the same number of prisoners (or more), but under more acceptable conditions. Providing the additional capacity costs money, however. Construction costs typically range between $50,000 and $75,000 per bed. Additional money is needed each year—about $10,000 to $15,000 per prisoner—to maintain, guard, and manage prisoners. These high costs were undoubtedly influential in the rejection several years ago by New York State voters of a bond issue to provide additional prison space.

Moreover, additional capacity does not become available instantly. Many bureaucratic processes are involved in the construction of any new facility by a State government: deciding to provide the additional capacity, agreeing upon a site (especially gaining acceptance by neighboring residents), authorization and appropriation of funds by the legislature, architectural design, and finally construction. All these processes can take 4 to 7 years or more. Thus, a commitment to provide additional capacity to solve today's crowding problem will not provide the capacity until several years into the future, when the crowding problem may have diminished. By 1990, for example, the earliest date by which new prisons might become available, the number of people in the prison-prone ages will have decreased significantly, and so at least the demographic factor in the overcrowding problem will have begun to diminish.

Many who argue against providing additional capacity are concerned that the imprisoned population will simply expand to fill the available capacity—a variant of "Parkinson's Law." One study seemed to show by statistical evidence that this would happen; further studies, however, pointed out errors in those initial studies. It is still possible, of course, that there could be such an effect (even though the initial study failed to demonstrate it). Indeed, some judges are known to inhibit their sentencing when they know prisons are filled. However, during the 1960's, when prison populations were well below the available capacity, there was no pressure on judges to send more people to prison in order to fill that available capacity. Thus, the issue is far from simple.

The "front-door" approach involves finding alternatives to prison for those whom a judge might want to send there. This is clearly the approach favored by Mark Corrigan, who heads the National Institute for Sentencing Alternatives. "Front-door" solutions are not intended for the most serious offenders, for those who commit heinous crimes, or for those who represent a serious continuing risk in the community. They are, however, possibilities for "marginal" offenders who might otherwise be candidates for probation had they not already had one or more prior sentences to probation; these offenders warrant something more severe than probation. The problem is to develop an array of alternatives so that the judge, the victim, and the community can be satisfied that the level of punishment is appropriate and that the alternative might be more successful in reforming the offender. The alternatives most often considered are some combination of intensive probation, restitution, community work, or residence in a group home under tight surveillance but with the right to go to work during the day.

The "back-door" approach involves shortening the time served by imprisoned offenders. Indeed, this is the form traditionally used by parole boards to regulate prison populations. Parole boards hold the key to the "back door" by their authority to release prisoners who have served an appropriate minimum sentence but less than their maximum term. Some States have adopted "emergency release" laws under which some prisoners' eligibility for release is advanced, and some prisoners are released, once the prison population reaches a designated level.

The problem of prison crowding is one of the most vexing ones facing the criminal justice system today. There is widespread agreement that people who commit serious crimes must receive punishment and that people *who do so as recidivists* must be punished more severely. There is also agreement that the objectives of prison for punishment and crime control (through general deterrence, rehabilitation, and incapacitation) are appropriate, but there is some disagreement on how effectively they are achieved. There may also be general agreement in ranking convicted offenders in terms of those most and least deserving of prison. There is still significant division, however, over how deeply into that list imprisonment ought to be applied, and for how long. As a richer array of intermediate sanctions is developed to fill the gap between the slap-on-the-wrist referral to an overworked probation officer, at the low end, and a sentence to a State prison at the high end, and as the cost of imprisonment becomes an important part of the choice, there may emerge greater agreement on how deeply and how broadly the imprisonment sanction should be applied.

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Discussion Questions

1. Which of the three approaches to relieving prison crowding—building more prisons, diverting offenders from prison, and shortening sentences—do you prefer? Why? How do you think your neighbors feel?

2. If a Federal court orders a State to reduce its prison population to the level of its capacity, what factors should be taken into account in deciding which prisoners to release?

3. Do you think prisons are very effective in reducing crime? How would you go about finding out?

4. What can be done to require those who want stricter punishment to also take account of the costs involved?

5. Should judges' sentencing decisions be different when prisons are crowded? That is, should a judge who would impose a prison sentence in a given case if the prisons were not crowded, impose a shorter or different sentence if the prisons are crowded?

This study guide and the videotape, *Prison Crowding*, is one of 32 in the Crime File series of 28½-minute programs on critical criminal justice issues. They are available in VHS and Beta formats for $17 and in ¾-inch format for $23 (plus postage and handling). For information on how to obtain *Prison Crowding* and other Crime File videotapes, contact Crime File, National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850, or call 800–851–3420 or 301–251–5500.

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OVERCROWDED TIME

Why Prisons Are So Crowded

and What Can Be Done

This report was prepared by the Edna McConnell Clark Foundation under the supervision of Kenneth Schoen, Director, Program for Justice.

The final draft was written by Kevin Krajick and Steve Gettinger with research assistance from Elliot Gordon. The booklet was edited by Gretchen Dykstra, Director of Communications.

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PART 1—THE SITUATION

HOW CROWDED ARE THE PRISONS?

America's prison population is running out of control. On New Year's Day, 1982, there were more than half-a-million people behind bars, a new all-time high. That is 41,292 more than were locked up the year before, and that is the biggest one year leap in prison population in America's history.[1] But states only built housing for four out of ten of the new prisoners.

In New Jersey prison inmates are sleeping in storage rooms, hallways and lavatories. In Texas prisoners are spilling over into tents and tin sheds. In South Carolina they sleep three at a time in cells not much wider than coffins. In North Carolina's century-old Central Prison some cells are crammed with four inmates and bunks line the walkways in front of the cells. And New York State, in what one observer called "a move with ominous symbolism," lifted a cap on the population of the Attica State Correctional Facility which was placed there in 1971 after a riot that left 43 people dead.

Crowding has now burst the confines of the state and federal penal systems and reached down to local levels. In at least 20 states the prisons are so crowded that they are refusing to accept sentenced inmates who, instead, must wait in jam-packed local jails for months or years until a prison bed opens up. The number of such "backed-up" inmates grew by 20 percent in 1981.[2]

Jails, the traditional backwaters of the state prisons, reached their limits in 1981 and some jail administrators are now desperate. One sheriff in Arkansas chained inmates to the state penitentiary fence and tried to abandon them. State officials armed with shotguns made him take them back.

In New Jersey 1,200 of the state's 9,400 prisoners were backed up into ten local jails by May, 1981. A federal judge ordered the state to begin moving out its backed-up prisoners because overcrowding had produced conditions "so degenerative and unhealthy as to be constitutionally impermissible." Since new prisons will not be ready until 1986 or 1987, state officials have hinted that their only remaining option is to turn prisoners loose, a stopgap measure that several states have already used.

Because there is not adequate space for all these prisoners, prison overcrowding and violence have reached dangerous new levels. Prison staff feel they are losing control of the institutions. Because prisons are so expensive, state governments are staggering under the burden of supporting such a vast system.

Although there are more people locked up than at any time in history, a majority of Americans claim they are more afraid of crime now than ever before. A recent public opinion poll indicates that crime stands second only to the economy as the major domestic issue.[3] People want the government to lock up more criminals. People seem to believe that more prisoners will result in less crime.

But where can we put more prisoners? It will take a decade to build adequate facilities just for the people already behind bars, never mind those we might add. It could cost more than 50 billion dollars over the next ten years to build those prisons.

To run them would cost even more. Can our sluggish economy support such an expenditure?

On few issues are there so many opinions and so little agreement, but one way or another we must deal immediately with the overcrowded prisons. They threaten the financial stability of the state governments and the physical safety of the institutions' staffs and inmates.

There is presently no comprehensive overview of the overcrowded prison problem which includes possible solutions. This publication is one modest attempt to do something about that void. Designed primarily for policymakers, it is divided into two parts.

Part One argues that prisons are crowded because society is demanding a tough response from leaders to what people believe is an increase in crime. But is this increase real? This booklet argues that it is not.

Policymakers are, consequently, passing tough new laws that are filling the prisons at a rapid rate with more offenders serving longer sentences for less serious crimes. But are these longer sentences necessarily reducing crime? This booklet argues that they are not.

But the effect of all these imprisoned people is that many prisons are inhumane and counterproductive, and the courts are demanding change. The federal government is not offering substantial help and the states cannot afford to build new prisons.

Part Two, therefore, examines various solutions to this complicated and disheartening situation. Part Two highlights comprehensive strategies that have proved successful and that states can use to establish alternative punishments that truly punish offenders without asking society to assume a huge tax burden.

WHY ARE WE SENDING SO MANY PEOPLE TO PRISON?

We are scared. Not only has the rate of imprisonment gone up, so has the fear of crime. Everyone seems to believe crime is skyrocketing. America does have one of the highest rates of violent crimes in the industrialized world: in 1979, 35 of every 1,000 Americans were victimized by a violent crime.[4] But while the crime rate is high, it has not been growing as quickly as most believe.

Our fear comes partly from the misinterpretation of statistics and the "hyping" of crime trends by people who should know better—mainly politicians and journalists.

There are some statistics that supposedly show a steady growth in crime, but these are deceptive. To understand why, we have to look at the two major ways in which we measure crime. One is the Bureau of the Census' Crime Victimization Survey which comes from twice-a-year surveys of about 132,000 people. It covers all crimes, reported and unreported. The second is the FBI Uniform Crime Report which measures only crime reported to the police.

The Crime Victimization Survey is regarded by most experts as more accurate because it is not affected by technical changes in police departments or by social trends that increase or decrease the proportion of crimes reported. The FBI reports are prone to vast inaccuracies from year to year because of such changes. These include increased use of computers by the police, changes in police departments' crime reporting procedures, shifts in public attitudes that result in reporting of more crimes, and an increasing number of people who insure their property and, thus, who must report to the police when it is stolen.[5] These changes combined in the 1970's to inflate FBI figures from year to year. Thus, FBI reports indicated a 28 percent rise in property crimes between 1973 and 1979.[6]

But the Crime Victimization Survey shows only a 3.6 percent rise for crimes of violence and a 6.2 percent increase for crimes of theft for the same period.[7] The changes in the Victimization Survey are so small that many scientists consider them "statistically insignificant"—that is, they are too small to say for sure whether there was a change up or down. But the FBI Uniform Crime Report almost invariably gets the headlines in the press and is included in the speeches of politicians. The reason may be that it makes a better headline, or sounds better on the soapbox.

Much of the recent fear may also be due to the panic generated by the media, especially television, which appears to pay more and more attention to crime these days. One particularly brutal crime described on television creates more fear than a hundred equally bad acts that appear only in police reports. Seeing and hearing a violent act makes us feel personally afraid, personally vulnerable. The fact that something is on TV elevates it to a significance that easily rises above reality.

A good example of this is the "wave" of crimes against the elderly in the late 1970's. Beginning in 1977, the press suddenly began reporting on dozens of incidents of brutal rapes, muggings, beatings and murders committed against old people. "Crimes against the elderly" seemed to become an overnight phenomenon, almost a whole new class of crime.

As news reports of such crimes increased, so did fear among elderly people and among the general population as well. There was a widespread perception that elderly citizens had suddenly become the target of a new breed of criminals.

Yet, crime statistics showed no increase in crimes against the elderly. A report released by the federal government in 1981 confirmed the suspicion that high levels of fear among the elderly were unfounded. In fact, the study found that victimization goes down with age for most categories of crime.[8]

How did the "crime wave" happen? One sociologist studied newspaper and television journalists in New York City during the "crime wave" and found that editors and reporters had created the "trend" on their own. It began, she wrote, when one newspaper picked up several muggings of old people and began looking for other examples. Soon, the other media started looking upon "crimes against the elderly" as a theme, and they began stumbling over each other to report them, even though the incidents themselves were not necessarily more numerous than before.[9]

Many similar waves of crime may be created by the local and national media each year. While coverage invariably slacks off after a few weeks or months, unfortunately the fear generated by the reports does not. It is stored in the public consciousness, accumulating layer upon layer, with drastic social effects.

THE FEAR OF CRIME AFFECTS SENTENCE AND PAROLE POLICIES AND, THEREFORE, PRISONS

This misrepresentation of crime trends has a powerful effect. Increased fear has resulted in tremendous pressure on legislators, judges and parole boards to "do something about crime."

What have they done? *American Prisons and Jails*, the most massive study of behind-bars populations done to date, says, "It appears that by far the largest share of prison population growth is due to an increase in the number of prisoners sentenced for property and public order crime, with only a small fraction of the growth attributable to greater numbers of violent offenders."

According to the study, the proportion of violent offenders in prison dropped from 52 percent to 47 percent between 1974 and 1978. There has also been a large increase in the number of people incarcerated for minor "public order" offenses such as drunkenness.[10]

In other words, we are imprisoning more people for less serious crimes, rather than locking up significantly higher numbers of the criminals people fear the most — those who commit arbitrary, unprovoked acts of violence.

Sentencing Patterns

And these minor offenders are being imprisoned for longer terms because of changes in sentencing patterns around the country. As of February, 1982, 37 states had "mandatory" sentencing laws, many of them recently passed by state legislators.[11] These laws require that certain classes of felons be given long prison sentences with little or no chance of parole. The most popular of these laws are the "habitual offender statutes" that mandate long terms — and in many cases, life sentences — for those convicted of repeated felonies. At first, most of these laws were directed at the real incorrigibles — people convicted of their third and fourth felonies. But lately, many legislatures have dropped the threshold; in 29 states now, habitual offender statutes take effect after the second felony convicton.[12]

In Alabama, mandatory sentencing laws passed in 1980 have resulted in both higher prison admission rates and longer terms. Prison admissions rose by a quarter in 1981. A third conviction for a property crime carries a 30-year term, with no time off for good behavior. Repeated violent crimes carry even higher penalties.[13]

Many states have not waited for offenders to repeat their crimes to clamp down on them — they have just increased their penalties across the board. In Indiana terms for burglars were more than doubled under a new sentencing code passed in 1978. The code requires judges, for example, to send burglars to prison for four years without benefit of parole. Under the old law, which left sentences open-ended, burglars served an average of 1.8 years. Ten other states have passed determinate sentencing laws since 1977.[14]

One of them, California, has had a rapidly rising prison admission rate since 1978, the year *before* determinate sentencing began there. This suggests that, with or without the new law, California judges were getting tougher on offenders.[15]

In the Northeast, too, more punitive laws are crowding the prisons. In New Jersey, for instance, admissions to prison have gone up by 15 percent since 1980, when a tough new penal code was enacted. Average prison terms have gone up from five years to seven years. As a result, the prison population went up by a third in 1981. It is expected to triple within five years. A task force appointed by the governor unambiguously places the responsibility for the overcrowding on the new laws, not on the crime rate.

Parole

In addition to mandatory and determinate sentencing, many states have also slashed the powers of their parole boards, contributing heavily to prison overcrowding.[16] At least seven states have done away with parole altogether; all inmates in those states have to serve their full sentences.

At the Maine State Prison, for instance, the average prison stay has doubled in the five years since the legislature abolished parole. In February, 1982, the state's prison population reached an all-time high, with the prisons full and many inmates overflowing into county jails.[17]

In many states where laws leave the parole boards intact, the boards have cut down on releases from prison on their own because of public pressure to keep criminals locked up longer. In a growing number of states, even the venerable institution of "time off for good behavior" has been abolished. For over a century in most states, "good time" has been awarded automatically by prison authorities and taken away only for serious misconduct. Wardens cite it as a major tool for keeping prisoners under control and preventing overcrowding. Good time traditionally can subtract as much as a third or a half from an inmate's maximum sentence. With this gone, prison authorities have lost their safety valve, and prisoners have lost one last incentive to maintain order in the institutions.

WHAT ARE THE EFFECTS OF OVERCROWDING?

Overcrowding magnifies all the bad effects of prison. Increased assaults, suicides, mental disorders, fatal medical conditions, idleness and riots are the yardsticks of prison overpopulation.

Overcrowding acts to break down our laws, not build them up. When prisons are overcrowded, some inmates are in effect sentenced to death through increased violence and disease. Others are sentenced to uncontrolled, recurrent homosexual rape and terror inflicted by unsupervised predators. The courts of law do not pass or intend these added sentences; but overcrowded prisons carry them out.

Overcrowding has made the already-difficult task of running the prisons close to impossible. Many prison administrators have given up trying to supply potentially rehabilitative services; sheer physical control of the institutions has become the main objective. Riots and gang warfare are now constant threats. At the most crowded prisons, there is real question as to whether the staff controls any more than the wall and barbed wire fences that keep the inmates from escaping. Guards are unable to separate the violent prisoners from the non-violent prisoners; guards are often unable to stop stronger inmates from victimizing the weaker ones.

In the first six months of 1980, 150 prisoners in state facilities were either murdered or committed suicide — double the rate of 1979.[18] In 1981, there were major violent prison disturbances in Iowa, Michigan, Florida, Tennessee, Connecticut, Pennsylvania, South Dakota, Texas and North Carolina.

Smaller incidents of violence are epidemic, too. In New York State, for example, after a population jump of 18 percent in 1981, assaults on prison personnel increased 28 percent and the number of inmate-on-inmate assaults jumped 69 percent.[19]

In January, 1980, Raymond Procunier, commissioner of the Virginia corrections system, issued a statement of warning that officials were "playing Russian roulette with the lives of inmates, staff and the public" at the New Mexico State Penitentiary, after he visited the prison and found massive overcrowding.

Two weeks later, 33 prisoners died and five guards were brutally beaten in one of the most savage prison uprisings of all time. The state's attorney general later agreed that overcrowding was a major cause of that insurrection.

Medical Ramifications

The American Medical Association summarized years of study by saying that "long term crowding causes and accelerates the spread of communicable disease" and promotes heart attacks and high blood pressure. The psychological pressures of crowding as well as the density of germs break down the body's defenses to diseases, the AMA found. That is why some inmates, especially older inmates, die prematurely of "natural" causes under these conditions.[20]

Research shows that inmates do not adjust to crowding over time, the way an urban commuter might adjust to a crowded train. Commuters get off the train after a few stops and calm down in the more tranquil environment of office or home. But the prisoner has no escape. He is crowded for months and years in the same small space. Inmates are affected more, not less, as time goes by.[21] Tempers flare more easily. Minor jostlings erupt into major brawls. And more people are committed to psychiatric treatment the longer they are crowded into prisons.[22]

Dormitories

One of the most disturbing findings of all is that all the bad effects of crowding—disease, violence and stress—are much worse in dormitories than in cell housing.[23] Yet, it is dormitories that the states are using in rising numbers to house their burgeoning populations because dormitories are cheaper and faster to build.

In 1978, about 40 percent of prison inmates were housed in dormitories, many holding over 100 prisoners. Most of these prisoners were crammed into such tight spaces that their housing was considered either unconstitutional by the courts or unhealthy by corrections experts. Now the proportion of inmates in dormitory housing is probably much higher.[24]

Sometimes correctional officers are afraid to enter dormitories because they are so outnumbered by prisoners. Testimony before an Indiana state legislative committee in March, 1982, revealed that two newly-built dormitories of the state's Pendleton Reformatory are supervised only by guards looking through small windows at the ends of the rooms.[25]

The American Correctional Association has recommended a moratorium on future dormitory construction. But the temptations of lower building costs and the availability of former hospitals and military installations for conversion into prisons are likely to increase rather than decrease the proportion of inmates housed in dormitories.

Minimal Services

Overcrowding also has exacerbated the problem of idleness. Prison industries, where they exist at all, have been unable to absorb a growing labor pool. Prisoners already engaged in industrial work must work shorter hours to accommodate newcomers.

Overcrowding has also restricted access to educational programs. James Ricketts, director of the Colorado Department of Corrections, testified before a state legislative committee in February, 1982, "We're no longer trying to match up an inmate and put him where the programs are. We're just trying to find a bed."[26]

Although the rehabilitative effects of prison jobs and education are uncertain, their value as a means of keeping order is evident. Decreases in activity are almost always followed by increases in violence, according to prison administrators. "Work is the key to controlling all these people," said W.C. Byers, a Texas prison official.[27]

Texas has always been famous for supplying work to its inmates, even if it is only highly-regimented hand labor in the prison's farm fields. But the proportion of inmates engaged even in this labor has decreased in the last three years because there are too many inmates for the correctional officers to supervise. Violence has risen precipitously in that time.

DO PRISONS ACCOMPLISH WHAT WE WANT THEM TO ACCOMPLISH?

This situation, often inhumane and unjust, demonstrates that as a society we are becoming less tolerant of criminal behavior than in the past. And one thing we know about the institutions that our tough new laws have crowded: they punish. All penal institutions, even the most humane, inflict humiliation, pain and deprivation on inmates. That is just one reason we send people to prison.

But, presumably, we have not locked up a half-million people only to make them suffer; we expect their incarceration to reduce crime, too. If we are to continue locking up so many people, obviously we will have to build many new prisons to house them, at great cost. Will the benefits in reduced crime outweigh the expenses?

There are three ways in which prisons may possibly reduce crime:

- Prisons *deter* free citizens from committing crimes and ex-offenders from committing future crimes.
- Prisons *incapacitate* criminals who would be committing crimes if they were free.
- Prisons *rehabilitate* criminals and turn them into law-abiding citizens.

How well do prisons, as we now use them, accomplish these goals?

Deterrence

Deterrence theory is based on the premise that individuals make rational, cost-benefit calculations in deciding whether to commit a crime. For some categories of crime, there is evidence of "marginal deterrence" — that is, that some punishment, rather than no punishment, does deter offenders. In Great Britain, for example, drunk driving declined substantially when a law was passed mandating a year of imprisonment for such offenders; before, there had been little or no penalty.[28]

There is no evidence, however, that imprisonment is any more effective a deterrent for most crimes and for most people than other penalties. Mere arrest and conviction for a petty crime can lead to loss of employment, disgrace in the community and even dissolution of one's family. The typical American is afraid of these consequences, and that is enough.[29]

The typical criminal, however, is not the same as the typical American. Most prisoners today are poor, minority youths from the inner cities. For them, there is little to lose and much to gain from committing crimes. A large number of them have been chronically unemployed and have little hope of finding a job. For them, committing crimes easily becomes a way of life.

Many chronic criminals are addicted to alcohol or drugs. Possibly half of those in prison were either drunk or high on drugs (or both) at the time they committed their crimes. Studies show that use of these substances tends to make individuals forget about the risks of their actions.[30] But even discounting the temporary boldness or the desperation induced by drugs and alcohol, the typical offender tends to believe that it is unlikely that he (or she) will be arrested or imprisoned for any one crime he commits. He is right; for every 100 felonies committed, 50 are reported, 12 suspects are arrested and 6 are convicted. For those 100 felonies, only two people will go to prison.[31]

Many people have suggested that if we could make punishment more certain, we could then achieve a more powerful deterrent effect. But barring some miraculous change in the effectiveness of the police, or the willingness of people acquainted with criminals to inform on each other, we can't get around the fact that we arrest someone for only 12 percent of all crimes. And, unless there are more resources for prosecutors, judges and public defenders whose caseloads are already unmanageable, the best we can hope for is to make certain that those who get convicted are punished.

More certain punishment, however, is not the same as more severe punishment, which is the approach we are taking now. Doubling or tripling the punishment for a certain crime does not necessarily double or triple the deterrent effect.

Many comparative studies have debunked the notion that severe prison sentences are a deterrent to serious criminals. Several studies in the 1960's compared groups of similar criminals who received shorter or longer sentences for the same types of crimes and found that they committed new crimes at the same rates when they were freed.[32] Other studies compared the deterrent effects of longer or shorter prison sentences meted out by different states for such diverse crimes as murder, assaulting a police officer, rape and writing bad checks and found no discernible differences in state crime rates.[33] Other research has compared international crime rates with threats of punishment in different countries and found no correlation.[34]

The National Academy of Sciences, in a 1981 summary of previous penal research, concluded that "caution should be exercised in interpreting the available evidence as establishing a deterrent effect, and especially so for the sanction of imprisonment."[35] The studies suggest that we reach a threshold of diminishing returns soon after we start defining prison as the appropriate punishment for a crime; raising the term for robbery from, say, five years to seven years or ten years has little or no effect. The reason is that we are already dealing with a population of people who are willing to go to prison. Adding numbers to an already drastic punishment means little to them. They are gambling on not getting caught at all. And when chronic offenders are caught and sent to prison, they tend to look upon it as an overhead expense of the business. There is a saying among convicts: "If you can't do the time, don't do the crime."

So, we seemingly are unlikely to deter a great many serious criminals with threats of prison. That brings us to look at another of the stated reasons for locking up at least some of them for a long time: getting them off the streets so they can't victimize us.

Incapacitation

Common sense tells us that if we lock up some criminals who are chronic offenders, then we will prevent them from committing a certain number of crimes on the street. The question is, how much crime can we prevent by locking up X number of criminals?

Research indicates that the incapacitating effect of prisons is modest, and that if we look realistically at the number of people we can afford to lock up, this effect may already have reached a point of diminishing returns. It is possible that we may be able to use prisons more economically for incapacitation if we can identify certain high-rate offenders who are responsible for a disproportionate amount of crime. But at the moment, our ability to identify that group is very limited.

How many crimes do our prisons now prevent by restraining criminals? Two of the better-respected studies estimate that crime would go up by only four or five percent if we released half of all prisoners tomorrow and, at the most, eight percent if we did away with all prisons. The highest research-based estimate of the amount of crime now being prevented by prisons is 20 percent.[36]

How is it possible that we imprison so much, yet affect crime so little? For one thing, under our social and legal system, we apprehend and imprison only a small percentage of the criminal population.

Second is the fact that the "criminal population" itself is not a finite, identifiable group of people. Each day, some criminal careers end and others begin because crime is primarily a young person's occupation. Nearly half of all persons arrested for violent crimes are under 18. Yet, the peak age at which criminals are sentenced to prison is the early and mid-20's. Thus, the incapacitative effect tends to come into play only after the bulk of the crime has already been committed. Convicted and imprisoned criminals are constantly being replaced on the streets by younger, much more active criminals who have not yet been caught doing something really serious.[37]

Third, many crimes are committed by groups. One study estimates that one-third of all serious crimes are committed by more than one person. Many criminal groups are large enough that it works out that the average serious crime involves 2.1 perpetrators. This means that the removal of one or even several members of a criminal group will simply dictate a need for the group to recruit new members. To prevent one crime, you might have to imprison a half-dozen people.[38]

Lastly, we have never developed a reliable way to predict how many crimes a particular offender will commit when released, or even if he will return to crime at all. So, we do a poor job of choosing whom we ought to incarcerate for the protection of society.

If our current high rate of imprisonment is having only a modest incapacitating effect, how many more people would we have to imprison to achieve a further reduction? If we used "collective incapacitation," that is giving more and longer sentences to all convicted felons, the resultant increase in the prison population would be staggering.

In 1978 the National Academy of Sciences estimated that in order to achieve a ten percent reduction in crime, California would have to increase its prison population by 157 percent; New York by 263 percent; and Massachusetts by more than 310 percent. In New York alone this would entail imprisoning close to 100,000 people, more than a quarter of the current national prisoner total.[39] Another study, done by the American Justice Institute, estimates that Ohio could achieve a similar reduction in crime, but only with a 500 percent increase in imprisonment.[40] Policies that would result in such a scale of imprisonment would generally be the result of sending *every* convicted felon — including shoplifters, petty thieves and all first-time offenders — to prison for terms averaging five years.

The severity and scale of this punishment and the amount of money we would have to pay in order to inflict it are almost unthinkable. Sending every offender to prison for five years, if it does not shock our consciences, would certainly empty our pocketbooks. Most people would agree that doubling, tripling, quadrupling or quintupling the number of prisoners is not a realistic proposal if it would reduce crime by only ten percent.

For this reason, "selective incapacitation" or "focused imprisonment" is being used by some who are seeking both a reduction in crime and a solution to prison overcrowding at reasonable cost. Selective incapacitation works on the theory that we can pinpoint a small number of individuals who commit many serious crimes. Then, if we imprison them for long terms, we could achieve a hefty incapacitation effect without raising the prison population to unmanageable levels.

There is a great deal of evidence that such a small group of high-rate offenders exists.[41] The trouble comes in trying to distinguish them reliably from other prison inmates. Everyone admits that all efforts to label high-risk inmates have resulted in a high number of mistakes — people who are wrongly identified as physically dangerous or prone to commit a great many crimes. Some attempts at prediction have produced as many as 19 mistakes for every correct prediction. The reverse is true, too: more than half of the dangerous people usually are put into the non-dangerous category.

But what many regard as the most promising current research has been done by the Rand Corporation in Santa Monica, California. For several years, scientists there have been refining tables that they believe can identify "high-risk" burglars and robbers, using criteria such as juvenile crime records, prior convictions for the crime they are trying to predict, heroin or barbiturate use, employment records and previous institutionalization.

They suggest that the robbery rate in California could be lowered by 15 percent by imprisoning five percent *fewer* robbers if the high-rate robbers were imprisoned for longer terms and the low-rate ones for shorter terms. Burglaries, they say, could be lowered by 15 percent with only a seven percent increase in the number of imprisoned burglars.[42]

The Rand Corporation scientists assert that they make fewer mistakes than criminologists using earlier systems, but they have not tested the system, and they admit that the chance of wrong predictions still persists.

So, we seemingly can't reduce crime sharply by just removing some offenders, which brings us to the third and last argument on behalf of more imprisonment as a way to deal with crime: rehabilitation.

Rehabilitation

For nearly a century, beginning with prison reform movements in the 1870's, "rehabilitation" was the battle cry of progressive corrections professionals. By the mid-1970's, many in the field had begun to doubt that prisons — or any other corrections program, for that matter — could rehabilitate a significant number of people.

In a now-famous study, criminologist Robert Martinson evaluated 231 studies of corrections programs in and out of prison and concluded in 1974, "With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism." He estimated that about one-third of all those who go through "rehabilitative" programs will return to crime — about the same proportion as those who do not go through such programs.[43] Other studies before and since have confirmed this research.[44]

The so-called "medical model" of crime — the belief that crime is a "sickness" that can be cured by proper doses of psychotherapy, education and work — has been generally abandoned. But most corrections professionals do believe that some individuals do rehabilitate themselves, statistics notwithstanding. Work and education programs in prisons give those individual inmates with a desire to change the *chance* to change. For that reason, it is necessary at least to "leave room for reform" of the individual, as criminologist Franklin Zimring says.[45]

But, unfortunately, prisons are just about the worst possible setting to try to give people the tools to overcome their problems. It's hard to overcome obstacles to success when one cannot read or write and academic classes in prisons have long waiting lists.

Prison industries, which could potentially be used to teach skills and work habits to inmates, are in worse shape. Nationwide, only one of every ten inmates works in a prison industry because there are not enough jobs to go around.[46] Many prison jobs, like sewing with archaic machines or doing obsolete hand labor in the prison fields, have little or no application to the outside world. Still, the inmates who get to do even those jobs are the lucky ones. Most inmates face a day-to-day regimen of total idleness that is not only non-rehabilitative, it is maddening and stupefying because it goes on for years on end. But idleness is only one of the prison experiences that may actually have debilitating, rather than rehabilitating effects.

The noise is also debilitating. Every footstep, every voice, every clatter of a spoon echoes back and forth across the huge space. Radios and televisions often blare for 16 hours a day. Inmates shout to each other over the din, steel doors slam. Sweat, disinfectant, old food and unwashed clothes combine into an odor from which there is no escape and there's never, ever, privacy — not even on the toilet because toilets are in full view of some other inmates and guards.

The lack of privacy is worsened by the fact that inmates are forced to associate with hundreds of people they don't know, don't like and of whom they are afraid. They are wise to keep looking behind their backs, because they might be beaten, stabbed or raped by other inmates.

Considering such conditions, it is not surprising that prisons probably breed crime and mental illness, rather than reduce them. Behavioral research indicates that most prisoners experience high levels of paranoia and continuous anxiety and frustration as a result of their confinement. This is usually accompanied by a "total sense of powerlessness, coupled with a profound resentment of authority," according to one study.[47]

It is popularly believed that prisons are "criminogenic" — that they produce criminal impulses rather than squelch them. The idea of prisons as "schools for crime" — that is, that young inmates learn how to become better robbers or more adept burglars from the instruction of more experienced criminals — has little basis in fact, according to a number of studies. It is more likely that chronic criminals are produced on the street and that peer pressure from other young people involved in crime, not instruction from elders, is the start of many a criminal career.[48]

But just as there is little proof that prisons actually produce more skillful criminals, it is equally difficult to believe that prisons, as they are now run, can possibly turn out more law-abiding citizens. If anything, the inmate probably leaves prison with an enduring hatred and fear of authority and, consequently, a greater susceptibility to peer pressure once outside. Some may argue that fear produces obedience, but the recidivism rate belies this. Fear and hatred do not produce the same results as respect or responsibility.

WHAT IS HAPPENING IN REACTION TO THIS SITUATION?

A wave of litigation has engulfed state prisons and local jails in the past decade in reaction to these extreme conditions. It is not receding. Major class-action prison conditions suits, most of them holding crowding as the main issue, reached a new height in 1982. As of March, 1982, prisons in 31 states plus the District of Columbia were under court orders or consent decrees to reduce overcrowding and improve related conditions. Another six suits were pending.[49] As overcrowding has filtered down more and more to the local jails, litigation has grown on that level too. *Corrections Magazine* recently reported that 1,300 of the country's 3,500 jails are now operating under court order or are likely to be soon. The National Sheriffs' Association estimates that 150 jails have already been closed by the courts because of poor conditions.[50]

Just a decade ago, it was a novel idea for a federal court to intrude on the running of a state or local institution. But inmates convinced the courts that the conditions in many prisons constituted cruel and unusual punishment under the Eighth Amendment.

Today the courts have clearly established their power to force the state and local government to deal with overcrowding and other issues. They have ordered many states to spend hundreds of millions of dollars for new housing. They have limited the number of inmates that can be admitted to institutions. In a few states, such as

Alabama, federal courts have forced authorities to release some prisoners to relieve overcrowding.

The Supreme Court has not discouraged prison litigation. "The courts certainly have the responsibility to scrutinize claims of cruel and unusual confinement, and the conditions in a number of prisons, especially older ones, have been justly described as 'deplorable' and 'sordid,'" the court said in June, 1981 in *Rhodes v. Chapman.*[51]

Despite its acceptance of prison litigation, *Rhodes v. Chapman* was, at least superficially, a defeat for those litigating against overcrowding because it upheld double-celling of prisoners in spaces built for one inmate. Most prison cells, which are now occupied by two or more inmates, were originally built for one. However, the *Rhodes* case was brought against a model institution where cells are relatively large and well-ventilated, living conditions are better than average and inmates spend most of their time out of their cells engaged in activities provided by the prison. Most prisons do not resemble that institution.

The Supreme Court stated clearly in *Rhodes* that the totality of a prison's condition is the major consideration in determining whether double-celling violates inmates' rights. Double-celling could easily be declared unconstitutional in other prisons, the court implied.

It has been: in November, 1981, just five months after the *Rhodes* decision, the U.S. District Court in Danville, Illinois ruled in *Fairman v. Smith* that double-celling in Illinois's Pontiac State Prison is unconstitutional. The decision quoted heavily from *Rhodes*. The decision reads, "The conditions of the prison described in *Rhodes* seem at most the antithesis of the conditions at Pontiac . . . Pontiac . . . is overcrowded, antiquated and has inadequate facilities . . . The confinement for years on end of two adult males . . . in a cramped, ill-ventilated, noisy space . . . is contrary to every recognized penalty . . . and constitutes cruel and unusual punishment."[52]

More often, though, the courts measure overcrowding in terms of square footage of living space per inmate. The Supreme Court has not established a specific standard, but most courts have adhered to between 45 and 60 square feet per inmate, either in a cell or a dormitory. Sixty feet is the minimum square footage recommended by the American Medical Association, the American Public Health Association and the American Correctional Association.[53] Many states not already under this type of order could be soon; currently, less than a third of the nation's prisoners have this much space per inmate.[54]

WILL THE FEDERAL GOVERNMENT HELP?

There is little hope that the federal government will give the states or localities any financial help for new prisons. The Law Enforcement Assistance Administration, which funneled billions of dollars into local anti-crime programs from 1968 to 1971, died a quiet death in the spring of 1982.

In March, 1982, the National Governors' Association called for the federal government to make assistance for construction of new prisons its number one criminal justice priority. Earlier in the year, the U.S. Attorney General's Task Force on Violent Crime had recommended that Congress appropriate $2 billion over the next four years to help the states build prisons.[55] Senator Robert Dole introduced such legislation in August, 1981. But all these efforts have gone nowhere; the powers-that-be in the federal government have remained adamant that, whatever tough anti-crime arguments we hear in Washington, it is not going to be translated into federal dollars to the states.

Presidential counselor Edwin Meese told a gathering of lawyers, "It is very unlikely that there will be federal funds . . . available for the fight against crime . . . If that was your thought, I'm very sorry I'm going to have to disappoint you."[56]

The federal government is only offering the use of surplus property for state prisons. But this, to a large extent, is also disappointing. 540 properties are currently available for review through the U.S. Bureau of Prisons. These range from one-acre lots of empty land to a 100 acre military base. The main problem is that most of the properties are unsuitable for prisons. Consider these available properties: a former sewage treatment plant in Bangor, Maine, or three acres of right-of-way on the San Luis Canal in California.[57]

So far, the government has transferred or rented only a few of these properties. Two former military radar bases in Watertown and Lockport, N.Y., have been leased to the state of New York for use as medium-security institutions. An unused Hercules missile site in Florida City, Fla. will go to local jail authorities. And the 416-bed Fort Dix U.S. Army Stockade in New Jersey has been leased to the state. However, the Army reserves the right to take the facility away from the state in case of future need; the lease runs for three years and does not include an option to renew.

In sum, unused federal facilities may help a few localities lucky enough to have the right buildings in the right places. But it does not appear that they will be able to make a major long-term contribution to the prison housing shortage.

In March, 1982, the Reagan Administration announced its backing of a bill that would establish concurrent federal jurisdiction and mandatory life sentences in federal prisons for habitual burglars and robbers. This bill is viewed with interest by some state lawmakers anxious to shift potential prisoners into the federal institutions. But it will not relieve the states of all. Even if it passes, federal officials plan to limit the number of such prosecutions nationally to only 500 a year, which would barely make a dent in the population of any one state.[58]

The federal government cannot handle any more cases than this because its prisons are just as crowded as everyone else's. Since the 1980 election federal prison terms have lengthened and commitments have risen. The result: a growth of nearly 4,000 federal prisoners last year, crowding the federal prisons to 18 percent over capacity.[59] So, basically, states will have to rely on their own resources.

HOW MUCH WILL NEW PRISONS COST?

Prisons are more expensive than other institutions because of the massive quantities of heavy materials involved. In addition to cells, space and equipment for all other services have to be built—kitchen, power plants, sewer lines, factories, infirmaries, school buildings.

Construction costs have gone up much faster than the general rate of inflation. In 1978, the cost of one new prison bed ranged from $25,000 to $50,000, depending on the location and the amount of security built into the institution.[60] By 1981, the average prison bed cost $72,000. In some places it was more; New Jersey estimated $80,000 a cell; New York, $90,000.[61] These figures are grossly misleading though, because they do not take into account the fact that most prisons are built with borrowed money—bonds, bank loans and the like. At today's interest rates, this can triple the cost. That means that the average prison cell built this year will eventually cost the taxpayer over $200,000.[62]

The capital costs of a new prison make up only eight percent of the total outlay over an institution's estimated 30-year lifespan. The rest goes to daily operations—up to $30,000 a year per prisoner in many states. The major portion of this goes to pay the salaries of correctional officers and other personnel.[63]

A few states, like Texas, have managed to keep their costs per prisoner far below other jurisdictions. They have done this in part by hiring fewer guards than other states. But the courts are cracking down on short staffing. For instance, Texas, with a high inmate-to-guard ratio, has been ordered to hire large numbers of new personnel.[64] As the states are forced to hire more guards and provide other expensive improvements, operating costs will rise.

Operating costs throughout the nation are also likely to increase as correctional officers, who are now often members of unions, demand greater compensation for their traditionally underpaid and increasingly dangerous jobs.

A majority of Americans believe there is a need for new prisons, but less than half of them are willing to pay more taxes to get them, according to a Gallup Poll done in April, 1982.[65] This reluctance to pay for "get tough" talk has been reflected in recent elections. Bond issues for new prisons were turned down in New York, Virginia and Oregon in 1981. Michigan voters rejected a one-tenth of one percent increase in state income taxes that was slated to build prisons. But in California, the state legislature recently rejected a proposed hike in the sales tax to finance law enforcement and prisons, and then the citizens of California passed a bond issue to build prisons.

With the American economy as weak as it is, there is less and less money available for public works projects. Interest rates remain very high, so capital construction requiring governments to borrow large amounts of cash are not popular expenditures. Continued high inflation makes continued growth in the prison population all the more intimidating. State governments will not be able to lay out the cash necessary to build our way out of the current prison overcrowding situation. So what can be done?

PART 2—POSSIBLE SOLUTIONS

- More people are being sent to prison for less serious crimes for longer periods of time.
- Longer sentences do not deter most criminals any more than moderate ones.
- Most people sent to prison are not sent there for violent crimes.
- Prisons do not rehabilitate offenders.
- Imprisoning more people has not reduced crime.
- Courts continue to declare overcrowded prisons illegal.

Prison overcrowding is not something we can build our way out of. We need billions of dollars just to house the current prison population under minimal standards of decency, and the funds are not available. Even if we could lay hold of the necessary money, it would take too long to build new prisons, and we cannot build them fast enough to keep up with the rapidly rising prisoner count. But people tend to look upon prison as the only "real" punishment. It is often said that criminals in prison are "paying their debt to society." But the truth would appear to be that *society is paying* a huge bill to punish men and women who might well be punished in less costly and less destructive ways.

By using more alternatives to prison, and shorter terms for some offenders, states could save money and reduce the prison population to a manageable level without raising the crime rate. But citizens will accept alternatives to prison only if they recognize them as still being *punishments*. That is, we can still believe in punishment for crime, but we can wean ourselves away from the fallacy that punishment must equal prison. Restrictions on freedom and economic sanctions can also be penalties, and they need not be accompanied by the dungeon-like conditions of the fortress prison to have an impact on human behavior.

Instead of having the victim pay taxes to lock up the person who victimized him, wouldn't it make more sense for the criminal to pay back the victims, or the community, in the form of restitution of community service? Enforced restitution can be accompanied by other punitive measures in the community, such as curfews, probation supervision and fines. And that would save the prisons for those who insist on committing serious crimes, or who violate the terms of those alternative punishments.

THE ADVANTAGES OF ALTERNATIVE PUNISHMENTS

Reduction of Prison Population

A 1981 study of the Indiana corrections system found that 1,324 non-violent prison inmates — 20 percent of the prison population — could be considered for alternative programs, such as restitution, community service and halfway houses.[1] Studies in other states have identified similar — and higher — proportions of inmates that correctional authorities consider good candidates for community corrections.[2] In Indiana, it was estimated that removal of these offenders from prison would eliminate the need for a new 400-bed prison and ease population pressures in existing institutions.

The Cost

Keeping offenders in the community is, usually, much cheaper than imprisonment. In Indiana the cost of imprisoning the 20 percent who could be in community programs is $20 million a year; the cost of alternative programs would be $1.7 million. And there would be other benefits: a potential of more than 200,000 hours of free community-service work by offenders, more than $100,000 in direct restitution that could be paid to crime victims, and a reduction in welfare costs for dependents of offenders who would now be able to continue support of their families.[3]

Effect on Crime Rates

No evidence suggests that increased use of community alternatives for non-violent offenders would increase crime. A 1981 study of the Minnesota community corrections system found that more than 80 percent of all felony offenders were being handled in their own communities without any increased risk to public safety.[4] For those offenders who need supervision in the community it can be provided through a halfway house or an intensive probation program.

It is true that there is no proof that alternatives to prison are any more "rehabilitative" than prison.[5] But few would argue that community corrections are *less* rehabilitative than prison. For those offenders who are willing to put in the effort to change, the community offers many more resources, and gives them a better chance at succeeding. Unless an offender presents a clear and present danger to society, there may be no rational reason for sending him or her to an environment that is clearly more destructive, more crowded and increasingly more expensive than a community setting is.

COMPREHENSIVE PLANNING IS NEEDED

One thing seems clear: the states that want to do something constructive about these issues have got to attack them on a system-wide basis and have got to bring all the relevant actors — the executive branch, legislators, judges, the bar, citizen groups and the media, just for starters — in on the act.

The problems apparently have to be attacked head on. While the average states were seeing increases of 25% in their prison populations, the two states with the smallest increases (Minnesota with 1.1 percent increase and Oregon with 3.5 percent increase) had both adopted comprehensive community corrections strategies.[6] Studies have shown that these efforts have saved these states significant amounts of money without endangering the public or arousing the electorate.[7]

Development of alternatives to prison takes time. Unfortunately, many states feel the need to buy that time with short-term solutions to prison crowding. Since building more cell space is not the answer, the only way out is probably to identify those prisoners who do not present a danger to the community and move them out of prison immediately. Michigan and North Carolina have taken emergency measures to release non-violent offenders without negative results.[8] With the immediate pressure off the prisons, the state can then concentrate on structuring alternative punishments to keep overcrowding from recurring.

There are several ways to keep prison populations under control. One way is to restrict the number of offenders sent there and to provide alternative punishments for non-violent offenders. ("Who Goes to Prison?") Another is to moderate the length of time that prisoners spend in custody. ("How Long Do They Stay There?") A third way is to effectively manage the prison system's capacity. ("Where Should We Keep Prisoners?")

In the following pages, some ideas that have worked in different states will be presented. Some of them can be implemented by one branch of government alone; others require both legislation and aggressive implementation. Whenever appropriate, the roles that legislators, judges, state executives, administrators or civic leaders can play in bringing about change will be highlighted. Although some strategies cut across several categories, we have classified them according to their primary impact.

WHO GOES TO PRISON?

Here we consider some ways now being used in a few places to see that offenders who do not belong in prison are not sent there, and some alternative punishments that are less destructive and cheaper.

Decriminalization — Too Many Crimes?

Many foreign observers are amazed at the broad reach of American criminal law into private behavior. While some laws, such as those forbidding certain types of common sexual behavior, are seldom enforced, their very presence on the statute books breeds disrespect for the law. Other minor offenses help clog our jails and courts with rather trivial matters. While some type of penalty might be necessary, imprisonment seems to many critics to be the wrong response.

For instance, 11 states have passed laws that decriminalize or reduce the severity of the penalty for private use of marijuana, substituting fines for imprisonment. In California alone, this move saves law enforcement approximately $150 million annually. But in Texas, carrying one ounce of marijuana can still lead to a ten-year prison term.

Some 34 states and territories have decriminalized public drunkenness.* (That is not the same thing as decriminalizing drunken driving.) Proper treatment is generally cheaper and more effective than incarceration. In 1980 more than ten percent of all arrests nationwide were for public drunkenness; a decade ago they accounted for a third of the total.[10]

Reconsidering Mandatory Sentences

By 1982 at least 37 states had passed some form of mandatory sentencing, requiring imprisonment for a minimum length of time for certain crimes.[11] Most of these laws have been enacted in the past few years.

Often these laws are enacted with the hope of increasing the certainty of punishment or reducing disparity between sentences. Some recent research has shown that they do neither of these things. In practice, most experts now agree that the major effect of these laws is to give prosecutors more powerful tools with which to extract plea bargains. 'Justice' is dispensed in precinct stations and prosecutors' offices, rather than in courtrooms.

In California, for instance, the so-called "Use a Gun, Go to Prison" law has proved to be somewhat flexible, if not arbitrary, in its application. It was enacted in 1979; a study of 1980 admissions to the California prison system showed that 2,365 of the new inmates had originally been arrested for crimes in which guns were used. But only half of them were given extra time in prison because of those guns.[12]

Most experts also believe that the so-called "Rockefeller Drug Laws" in New York that mandated long prison sentences for the sale of drugs proved ineffectual and unjust. Experienced drug pushers avoided prison by manipulating the system while inexperienced pushers ended up with long prison sentences; and the drug problem did not go away. In time, the laws were repealed or amended.

So, while their impact on equalizing justice is questionable, mandatory sentences do tend to increase the proportion of offenders going to prison and often increase the length of sentences for those unlucky enough to have the law applied to them.

Provide Alternative Punishments

In the past decade, a lot has been done to identify and develop alternatives to prison, particularly for non-dangerous offenders. Some of these are used frequently in other countries; others come from innovative local programs. But they are not an integral part of most corrections systems, and are seldom used in a systematic way. Here are some of the more interesting alternatives now being used or considered:

Restitution: Having the non-violent criminal pay back society or the victim for his crime is a highly visible way of dispensing justice. The offender does not "get away with it" by merely being put on probation, but he does not take up valuable prison space. Furthermore, the victim and the community receive services and income from the offender, rather than spending their money on prison space. Restitution is a program that can attract wide public support, and states like Mississippi and Georgia have made it a mainstay of their community-corrections efforts.

In Indiana, a private agency, Prisoners and Community Together (PACT), operates eight programs with wide community approval. One of these is a Victim Offender Reconciliation Program. PACT staff members mediate agreements between criminals and their victims after referral by the courts. Cases referred to PACT are generally property crimes like burglary or vandalism. The two parties meet face to face and agree on how restitution will be made. These meetings personalize the crime, and offenders often recognize the impact of their actions. As a side benefit, victims often learn about the conditions and attitudes that lead to crime, and many of them find their fear is lessened by meeting the offender, who until then has been a nameless, faceless threat. Eighty-six percent of the meetings between offenders and victims were evaluated as positive by the participants.[13] In two counties alone, offenders contributed 17,000 hours of work in 1980. When counting the costs saved by avoiding incarceration and the value of the work contributed, the economic benefit exceeded $100,000.[14]

A similar program, the Community Restitution In-Service Program (CRISP), in Pima, Arizona, makes restitution a condition of probation for those who can pay. For those who cannot, community service is arranged through a variety of government and non-profit agencies. A 1977 evaluation of the program found that 97.7 percent of the offenders in the programs completed their obligations.[15]

Restitution need not apply only to those who have jobs or economic means. Restitution centers can help offenders find jobs, and with counseling and supervision they can teach participants how to hold down a job and how to budget their earnings. In 1978 residents at one Mississippi restitution center earned $182,716 after taxes from jobs averaging $5.15 an hour. Of this amount, $39,192 was paid to victims, $22,404 went to support their families and $28,269 went into savings accounts. The state was reimbursed $41,315 for room and board, and $29,299 went to local courts in fines.[16]

Community Service: For crimes where the victim is the state, where no direct monetary loss occurred or where offenders have no way to hold a job, community service work is often an appropriate way to repay society.

In New York City the Vera Institute of Justice initiated a project in 1979 under which senior citizens' centers are being cleaned and refurbished by men who otherwise would be in prison. Project staff screen defendants and select those who can safely re-enter the community to serve their sentences. After eligible candidates are selected, consent is obtained from the prosecutor, defense counsel and the defendant. When they reach an agreement and the defendant pleads guilty, he is released to perform community service work, subject, of course, to the judge's approval.

Offenders are not put on the streets without support or supervision. Each work site has a supervisor to monitor the offenders' progress. Anyone who tries to "beat the system" is rearrested and resentenced. Because of careful screening and monitoring, this has not occurred often. Nearly 90 percent of the offenders successfully complete their sentences.[17] To try to prevent future criminal behavior, Vera assists the offenders by referring them to social service agencies that provide employment training, educational services and economic assistance.

Yet restitution and community service programs are still not widely used in this country. In 1978 only 59 programs across the country used restitution;[18] 16 states provided for community service sentences.[19] Now the numbers are probably somewhat higher, but these kinds of sentences are still given out only in a tiny minority of cases.

In some states, new legislation would be needed before a judge could impose restitution or community service in lieu of imprisonment. But in many states, judges seldom use their existing authority to impose these punishments, often because there is no organized way to collect restitution payments, to find work for offenders or to know about actual alternatives.

One challenge to those who plan these programs is to make sure they are used as true *alternatives to imprisonment*, not merely as ways to make things tougher for offenders who otherwise would be on probation. In the Vera program, only defendants who are likely to receive a jail term are eligible. On the average, participants had three prior convictions, and almost half had previously served time in jail. Most were charged with felonies.[20]

In Mississippi, to insure that the restitution center will serve as an alternative, it accepts only offenders who have already been sentenced to state prison. The center's staff screens incoming inmates. If restitution is appropriate, a recommendation is made to the sentencing judge.[21]

Fines: Another sentencing option which is also used infrequently is fines. In the federal court system, where fines are probably handed out for felonies more often than in the states, only eight percent of sentences included fines in 1976. But in many European countries, fines traditionally have been imposed for a wide variety of nonviolent offenses. Sweden and Finland rely heavily on "day fines." In these, a percentage of each offender's daily wage is assessed; the number of days he or she is penalized depends on the severity of the offense. In Sweden, more than 90 percent of *all* offenses are penalized by fines.[22]

Like restitution and community service, a fine forces the offender to contribute something to the community; revenues generally help defray the cost of the court system. Many offenders do not have the material resources to pay large fines, and some white-collar criminals are so well off that traditional fines mean little to them, but fines based on a sliding income scale, such as day-fines, can help to solve this problem. Offenders without jobs can be helped to find them and required to work as a condition of their sentences; well-off criminals can be made to pay significant amounts of money that really hurt.

Specialized Probation: Probation is the most widely used sentence for convicted criminals. There were about one million people on probation in 1976, the year the last census of probationers was made.[23] Now there are certainly many more.

The common perception is that more and more serious criminals are "getting off" with probation, but this is usually not true. Research shows that the proportion of *felons* on probation has dropped in recent years from 56 percent to 50 percent.[24] The big increases in probation have instead come from judges sentencing misdemeanants to probation who, heretofore, might have gotten off with a suspended sentence. But this bloats the caseloads and makes it difficult for probation officers (whose numbers have not increased proportionately) to do more than shuffle paperwork on their cases.

One criticism of probation has been that those so sentenced are provided with no programs and little supervision. But here and there, there has been a movement to add on conditions such as frequent reporting to the probation officer, residency in a halfway house, restitution, work and attendance at a school or training center.

Many corrections experts suggest that, with these increased sanctions and supervision, probation can be used for many of the offenders now going to prison. Many probation offices are now developing scoring systems so that officers' time can be devoted to higher-risk cases.

Probation tailored to the specific needs of the offender goes by many names: "client-specific planning," "resource-brokering," and "intensive special probation" are examples. They all mean that probation can now be given enough clout and provide enough supervision so that it is not just a "slap on the wrist."

Intensive Specialized Probation has been tried in San Francisco and by the Federal Probation Service. It focuses on offenders with specific needs, such as drug and alcohol treatment, and provides appropriate programs in the community. The probation officers act as "brokers" for resources already in the community, at little extra cost to the taxpayers.[25]

Some special probation programs focus on intensified supervision, coupled with community services, to make sure the offender stays out of trouble. In Lucas County, Ohio, the Adult Probation Department has a special Incarceration Diversion Unit that provides supervision specifically for offenders who otherwise would have gone to prison. In 1980 it was credited with a 20 percent reduction in the county's prison commitments thereby saving $410,000.[26]

In New York State, the Intensive Supervision Probation Program takes offenders identified as "most likely to fail on probation," and who would probably go to prison if failure did occur. The offenders receive extra supervision and community services. The New York State Council of Probation Administrators estimated that in 1981 more than 5,000 of the state's 25,000 inmates were eligible for the program.[27]

The National Center on Institutions and Alternatives, a non-profit consulting firm based in Washington, D.C., develops individualized probation plans for offenders likely to be sent to prison. The plans often combine restitution, community service, vocational training and medical or psychological treatment, along with intensive probation supervision or residence in a halfway house. NCIA begins with a diagnosis of the offender's strengths and weaknesses, and presents the plans to the judge before sentencing.

So far, in 70 percent of the cases, judges have accepted all or part of the plans NCIA has suggested.[28] One example is that of a Maryland youth. Ten of his friends were killed when the pickup truck he was driving crashed into a tree. The youth had been drinking beer and smoking marijuana before the accident and was convicted of manslaughter. Instead of sitting idle in prison today, he is devoting 3,000 hours of work at a hospital's Shock Trauma Unit, where every day he is confronted with the consequences of actions like his own. The youth is also enrolled in a drug rehabilitation program.

A follow-up study of the NCIA program in 1981 showed that 85 percent of the participants successfully completed their sentences.[29]

Comprehensive Community Corrections: Community programs have to be part of an overall plan to reduce imprisonment or some parts of the court and corrections system can undermine others. Currently, counties have little incentive to keep offenders in the community. It is easier to shift the financial burden to the state treasury by sending criminals to the penitentiary. But, ultimately, the $10,000-per-year (or more) difference between imprisonment and a community program will be borne by the same taxpayers.

One of the earliest, and most ambitious, efforts to correct this imbalance was California's probation subsidy plan. Communities were paid as much as $4,000 by the state for each offender they kept out of the state prison system. Thousands of people were kept out of the state prison system between 1967 and 1978 and these people committed no more crimes than those who were already getting probation. The communities used their subsidies to establish programs such as foster care, mental health services and narcotics testing.[30]

Minnesota's Community Corrections Act, passed in 1973, is an even more comprehensive statewide approach. The state distributes money to communities which voluntarily develop local alternatives to imprisonment. (By 1981, counties containing 70 percent of the state's population had joined the program.) Originally, the act required the counties to compensate the state for every offender sent to state prison for an offense carrying a minimum sentence of less than five years. That act established a policy that only offenders charged with very serious crimes were imprisoned. However, the provision was dropped when the state's more explicit sentencing guidelines were enacted.

This approach does not require localities to adopt specific designated alternatives to incarceration, but allows each community to devise a plan based on its own needs and resources. Alternatives can include, but are not limited to, traditional or intensive probation, community service, restitution, weekend detention and alcohol and drug abuse treatment. The localized approach also encourages grassroots participation in the system, which makes the idea of non-prison punishment more understandable to citizens.

In 1980 an evaluation of the act concluded that it had increased the number of offenders treated in their own communities, had encouraged judges to use local programs and increased the quality of local programs — all without increasing risk to community safety.[31]

Ohio, Oregon and Kansas have adopted systems modeled closely on the Minnesota law. An evaluation in Oregon found that in the program's first two years of operation, significantly fewer felons were sent to state prisons, the use of probation and split sentences had increased dramatically and the state had saved money.[32]

All of these programs, it should be noted, are limited to non-dangerous, non-violent offenders; they are not designed to put murderers and robbers loose on the streets.

A comprehensive community program often starts in the legislature—sometimes when it is confronted with cost estimates for building a new prison. But the initiative has sometimes come from governors or even the corrections department. The Oregon community corrections act was the product of a task force representing all of these branches of government, as well as the judiciary.

HOW LONG SHOULD PEOPLE STAY IN PRISON?

If finding alternatives to prison is one way to solve the problem, another way is to shorten the time people stay in prison. In the last decade, state legislators have sharply increased sentence lengths with little regard for the costs to the states. Even where the number of prisoners has declined, the prisoners often stay longer. There are ways to stop this trend. Some states are considering using prison capacity in setting prison terms; other states are relying on parole boards and emergency release mechanisms to cut the sentences of non-violent offenders.

Sentencing Guidelines

The Minnesota Sentencing Guidelines have made a difference. In 1980 the state legislature established a commission composed of judges, attorneys, corrections officials and several other citizens. It recommends uniform sentence ranges for various crimes. One of the factors it considers in setting these terms is the state's prison capacity.

The commission sets out presumptive sentences along a two-way grid, with the offender's crime on one axis and his criminal history along the other. Recommended sentences become stiffer with the severity of the crime and the number of prior convictions. (See chart on the following page) These recommended sentences are based on actuarial predictions of annual convictions, related to available beds. The commission also makes recommendations for which types of offenders should receive non-prison sentences for various crimes, thus addressing one source of alleged unfairness that is untouched by most sentencing systems. Judges are allowed to deviate from the guidelines, but they must put their reasons in writing.

The guidelines seem to be keeping the prison population under control. During 1981 the prison population averaged 93 percent of prison capacity, very close to the 95 percent goal that the commission had set.[11]

MINNESOTA SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

		CRIMINAL HISTORY SCORE						
SEVERITY LEVELS OF CONVICTION OFFENSE		**0**	**1**	**2**	**3**	**4**	**5**	**6 or more**
Unauthorized Use of Motor Vehicle Possession of Marijuana	I	12*	12*	12*	15	18	21	24 *23-25*
Theft Related Crimes ($150-$2500) Sale of Marijuana	II	12*	12*	14	17	20	23	27 *25-29*
Theft Crimes ($150-$2500)	III	12*	13	16	19	22 *21-23*	27 *25-29*	32 *30-34*
Burglary-Felony Intent Receiving Stolen Goods ($150-$2500)	IV	12*	15	18	21	25 *24-26*	32 *30-34*	41 *37-45*
Simple Robbery	V	18	23	27	30 *29-31*	38 *36-40*	46 *43-49*	54 *50-58*
Assault 2nd Degree	VI	21	26	30	34 *33-35*	44 *42-46*	54 *50-58*	65 *60-70*
Aggravated Robbery	VII	24 *23-25*	32 *30-34*	41 *38-44*	49 *45-53*	65 *60-70*	81 *75-87*	97 *90-104*
Assault 1st Degree Criminal Sexual Conduct, 1st Degree	VIII	43 *41-45*	54 *50-58*	65 *60-70*	76 *71-81*	95 *89-101*	113 *106-120*	132 *124-140*
Murder, 3rd Degree	IX	97 *94-100*	119 *116-122*	127 *124-130*	149 *143-155*	176 *168-184*	205 *192-215*	230 *218-242*
Murder, 2nd Degree	X	116 *111-121*	140 *133-147*	162 *153-171*	203 *192-214*	243 *231-255*	284 *270-298*	324 *309-339*

1st Degree murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

*one year and one day

Note: Cells *below* heavy line receive a presumptive prison sentence. Cells *above* the heavy line receive a presumptive non-prison sentence (and the numbers in those cells refer only to duration of confinement if probation is revoked.)

(Rev. Eff. 8/1/81)

The North Carolina legislature recently chose to address the issue of prison population directly. In 1980 state lawmakers passed a penal code that included long sentences for many offenses, but studies showed that the new code would drastically increase prison population in an already overcrowded system. Taking this into account, the legislators reduced sentences for many crimes by 25 percent in 1982.

Apparently, unless legislative proposals for increased sentence lengths are accompanied by projections of their impact on the prison population and on the state budget, trouble lies ahead. The answer may well lie in a systematic review procedure, insulated somewhat from temporary political pressures, to address the issue of appropriate sentence lengths.

Parole Guidelines

Guidelines that govern parole dates can also be used. The U.S. Parole Commission first used such guidelines in 1974 as a way to make sentences more uniform and to let prisoners know how much time they could expect to serve. As in Minnesota, the federal parole guidelines use a matrix system, setting the length of term not just by the severity of the crime but also by offenders' background such as past records. (See chart on following page.) At least 15 states now use some form of parole guidelines. In many of them, they have actually increased sentence lengths, but there is no inherent reason why they cannot work the other way if states wish to control their burgeoning prison populations.

Emergency Release Mechanisms

The fastest, but one of the most controversial, ways to reduce a critically high prison population is to release enough inmates to get the system back down to capacity. The governor, the parole board or corrections officials usually determine which non-violent inmates can safely be released. Most often the inmates who are nearing the end of their sentences are released one to nine months early.

Such a mechanism is only a safety valve, not a long-range solution to crowding; but some states have seen it as a necessary, if painful, first step. Michigan, Oklahoma, Connecticut, Iowa, Ohio and Georgia have passed emergency release acts in the past few years.

Michigan probably has made the most use of its law, passed in 1981. More than 900 inmates have been released early under its Prison Overcrowding Emergency Act. When the state's prisons exceed 95 percent of their rated capacity for 30 consecutive days, the governor is required by law to declare an emergency. This triggers a temporary rollback of most prisoners' sentences. The parole board then releases enough non-violent offenders to bring the population down to a manageable level. So far, the parole board reports no trouble in finding eligible inmates.

Any mass release of prisoners is bound to be politically unpopular. However, by limiting releases to non-violent offenders with short criminal records and by releasing

HOW FEDERAL PAROLE GUIDELINES WORK

OFFENSE CHARACTERISTICS: EXAMPLES OF TYPES OF CRIMES	**OFFENDER CHARACTERISTICS — Parole prognosis**			
	Very Good Example: no prior convictions, no prior incarcerations over 26 years old, no heroin/drug history	**Good** 1 prior conviction, no prior term, not on probation, no heroin history	**Fair** 1 prior conviction, 1 prior prison term, 20-25 yrs. old, on parole at time	**Poor** 4 convictions, 3 prison terms, younger than 19, heroin addict
	RANGE OF PRISON TERMS FOR ADULTS			
Property offense, less than $2,000 (theft, income tax evasion)	less than 6 mo.	6-9 mo.	9-12 mo.	12-16 mo.
Possession to sell less than 1 gram cocaine	less than 8 mo.	8-12 mo.	12-16 mo.	16-22 mo.
Receiving stolen property, $2,000 to $19,000 in value	10-14 mo.	14-18 mo.	18-24 mo.	24-32 mo.
Involuntary manslaughter	14-20 mo.	20-26 mo.	26-36 mo.	34-44 mo.
Heroin, 5-50 grams, possession to sell	24-36 mo.	36-48 mo.	48-60 mo.	60-72 mo.
Robbery, weapon fired	40-52 mo.	52-64 mo.	64-78 mo.	78-100 mo.
Murder	52 + mo.	64 + mo.	79 + mo.	100 + mo.

1981 figures Source: "Presumptive Parole Dates: The Federal Approach." Federal Probation, June 1982, pp. 45-54.

only those whose sentences are drawing to a close anyway possible criticism is lessened. The few studies that have been done on early releases suggest that there is little added risk to public safety by letting such inmates out of prison a few weeks or months early.

Good Time

Giving time off for good behavior is one of the oldest ways to reduce prison populations. The New York legislature, in reaction to crowding at the state's only prison, first introduced the concept in 1817.

Most states now use 'good time' as an award to inmates for good behavior and in some states 'good time' is used to reduce prison populations. But, in an effort to "get tough", some states (such as Connecticut and Alabama) have reduced or eliminated good time, only to watch prison populations go up and tensions inside the prison increase since there is little or no reason for inmates to avoid trouble.

In Illinois, however, about 4,600 inmates were awarded extra 'good time' between June 1980 and February 1982 to make room for incoming prisoners. According to Illinois prison officials, all those released were serving their first prison sentences and had no history of violence.

Prison officials in both California and New York have proposed adding "incentive good time," an extra reward for inmates who perform well in work or education programs, on the grounds that there is little incentive now for real effort; current "good time" laws generally reward inmates only for staying out of trouble.

Commutation

In a few states the unusual method of commuting sentences has been used to reduce overcrowding. A commutation (not to be confused with a pardon which wipes the slate clean) is a reduction of sentence as an act of mercy. In most states the power of commutation is reserved for the governor, although in a few states it rests with the parole board.

In Maryland, the governor has shortened the sentences of hundreds of nonviolent inmates each year since 1979 because of overcrowding. In Georgia, the Board of Pardons and Paroles has commuted the sentences of more than 8,000 inmates since 1979 to keep the prison population under control.

WHERE SHOULD WE KEEP PRISONERS?

Finding suitable alternatives to prison and reducing time served for those who do go to prison are two ways to deal with the problem: another way is to use different kinds of institutions. Some offenders *must* be sent to prison, but that does not mean that all must be kept in maximum-security institutions which are expensive and often damaging to the individuals. Many prisoners are in maximum-security prisons today who could be housed in less secure facilities. Often tradition, or a desire to give extra punishment beyond loss of freedom, governs decisions about where to place inmates.

For inmates nearing the end of their sentences, and even for some long-term inmates with proven records of dependability, community-based facilities such as work-release centers are often appropriate. Halfway houses and prerelease centers offer a gradual "decompression" period that help inmates readjust to the streets. Using these types of facilities can open up beds in the major prisons for dangerous offenders who really need to be there.

But to determine what level of security each inmate needs, a well-planned classification system is needed. New, research-based methods use objective information (such as prior record and age) to help determine which inmates are likely to escape or pose a danger to staff or other inmates. In almost all cases this is a much smaller percentage than is generally assumed.

In 1976 Alabama was ordered by the courts to reclassify its prisoners. Only 3 percent of the inmates were found to need maximum-security, as opposed to the 34 percent then assigned to that category. The reclassification study also found that 50 percent of the inmates could be handled safely in community programs or minimum-security facilities, but only 10 percent were being held there.[illegible]

Since 1980, both California and the U.S. Bureau of Prisons have reclassified their entire inmate populations. In both cases the results showed that large numbers of prisons were "over-classified." The authorities consequently revised their future plans to build less expensive, less secure institutions instead of the maximum-security prisons they had originally requested.[illegible]

Different Types of Settings for Different Types of Prisoners

As reclassification systems are employed, many inmates will be reclassified 'down' from maximum-security to minimum-security, but states do not necessarily need to build new facilities to accommodate these newly classified inmates. Existing buildings, such as abandoned mental hospitals, schools and motels are sometimes converted to minimum-security facilities. These buildings have an added advantage: as the states' prison population decrease these facilities can be converted to other uses and the penal system will not be saddled with unnecessary bedspace.

In Oklahoma ten motels were converted to minimum-security facilities; they hold 18 percent of the state's total prison population.[17] In South Carolina, 16 percent of the inmate population lives in similar minimum-security facilities, and the governor has recommended that these facilities be increased to handle more serious types of offenders.[18]

And reclassification does not have to stop with minimum-security. For some offenders residential supervision, but nothing as drastic as prison, might be suitable. Work-release centers can be used for these offenders, offering authorities transitional facilities which strengthen parole.

Work-release centers, usually administered by the state, allow offenders to hold down jobs in society as they complete their sentences. They are provided with supervision and counseling in informal, residential settings. Halfway houses, usually run by private agencies such as the Salvation Army, are used in similar ways. They, however, are also used for offenders who have completed their sentences but need help in readjusting to society.

Generally, most states house a small fraction of their eligible prisoners in such facilities—about six percent nationwide, according to a 1981 survey. Yet, community residential facilities can have a significant impact on prison populations. In Illinois, a vast expansion of work-release centers in the past four years has helped keep crowding in the state prisons to a minimum.

A TIME FOR LEADERSHIP

There is no one solution to the overcrowding problem. Some approaches may work in some states but not in others. Each jurisdiction will have to find its own way. What kind of crime problem does it have? How have the courts, the legislature, the corrections system and the parole board dealt with it? What are the fiscal constraints of the state?

Whatever is done will surely have to be done with the involvement of judges, legislators, executive officials, prison authorities and, ultimately, the local communities. Without a systematic approach, some parts of the system will work against the others. Decisions have to be made somewhere (even if it is only a decision to do nothing different)—and if one part of the system doesn't make them, another part will. Attempts to limit plea-bargaining exemplify this; they merely shift the decision-making power over the alleged offender from the judge to the prosecutor. This type of shuffling of powers results in little change in the criminal justice system.

This is where comprehensive statewide planning for community corrections comes in. Many new "alternatives to prison" have been changed by judges who, consciously or unconsciously, have used them as alternatives to simple probation. The state winds up with the added costs of a community corrections program without the benefit of decreased prison costs.

Any change in prison policies will apparently demand strong leadership, particularly if unpopular issues are involved. And leadership in corrections will demand a lot of education of the public.

Commissions and Task Forces

One way of educating the public, and exploring alternative strategies, has been for the governor to appoint a special blue-ribbon commission with broad representation to study ways of limiting imprisonment. Commission members, while acting in a quasi-political role, are separated somewhat from the political process, and thus are freer to make tough assessments. They can examine evidence somewhat more dispassionately, and can look to other states or countries for promising new ideas. Their suggestions for and support of existing models of successful alternatives can sometimes have a powerful effect on the press and the public. Legislative and executive leaders who participate in such task forces can become informed salesmen and saleswomen for the resulting proposals in the legislature and the community.

One of the basic issues such a commission has to address is what the state's policy of imprisonment should be. Some states establish a goal, an agreement to keep incarceration at a certain level. They don't assume any automatic connection between the rate of crime and the number of prison beds needed. Instead they know that the policies of the states' own making will determine what beds are to be provided and how they are to be paid for.

Commissions have proven to be particularly useful for dealing with hot political topics in a calmer way. In Oregon in 1975 a special task force of legislative leaders and state officials was appointed to consider what to do about prison overcrowding. It determined that construction of a new prison would be an expensive and only a temporary solution, and began searching the country for alternatives. In 1977 the legislature implemented its recommendations in a comprehensive community corrections act.

In North Carolina a citizens' panel was recently convened to consider the prison crisis. When it issues its report, its members will attend town meetings throughout the state to generate dialogue on the issues and, eventually, to build constituencies interested in penal reform. Similarly, in Texas, a state that has always kept most prisoners in maximum-security institutions, the governor appointed a task force in 1982 to search for alternatives when he learned that the state would have to spend at least $1 billion to construct more of such prisons in order to comply with a federal court order.

Media Education

But for state and local leaders to implement change, they need the support of the public and, therefore, the media. In recent years issues of crime and justice have gotten a lot of press. The best has raised the level of public awareness, calling attention to injustices and to the plight of forgotten victims of crime. But the worst has only served to fan fear. Scare stories in newspapers and graphic coverage on television of crimes are blamed by many sociologists and psychologists for the sense of fear that pervades many communities.

There is little that public officials can do to "control" the media, but some among them have learned what not to do, and have steered more press attention toward some of the constructive solutions which are already working.

One way public officials have enlisted media support for broad based measures has been to appoint publishers or editors to high-level task forces, along with judges and legislators. Members of editorial boards are often quite willing to have general background discussions about issues such as imprisonment policy or community corrections. These editors can then be helpful in allaying community fears about new programs.

Some judges have also invited reporters who often have never been inside prison to accompany them on tours of correctional institutions. Some legislators have invited dependable inmates to speak at legislative sessions or public forums to help dispel myths and stereotypes.

The media have also been enlisted to help in one particularly touchy area: locating new community-based facilities. Experience has proved that the best approach to winning community approval of such a facility is careful and open planning with maximum citizen involvement. Advisory boards have been established, composed of leading citizens, to help plan the facility, and sometimes to screen offenders for placement.

Simple information programs can also be part of the strategy. In Illinois state officials used the media to point out that a new 900-inmate institution would employ 425 people with an annual payroll of $9 million which would "eliminate unemployment in some areas altogether." As a result one town sent the governor a dozen roses and a petition with 10,000 names pleading to be chosen; other towns greeted visiting corrections officials with cheerleaders and high school bands.[40]

In Summary

Our prisons are overcrowded, posing multiple legal, financial and moral problems to state leaders. Economic realities make it impossible to deal with the problem by just building new prisons which will drain state budgets. But some states have made progress by designing comprehensive strategies that employ the experience and leadership of all participants.

These comprehensive strategies have approached the problem directly, asking all the tough questions: Who goes to prison and are there alternatives that would punish offenders more wisely? Are long sentences necessary and how can states reduce them if they are not? And can the problem be alleviated somewhat by redefining what a prison has to be?

These questions are complex and, at times, seem unanswerable, but some progress has been made in a few jurisdictions and the time has come to learn from those experiences. Co-operation is needed among all political leaders, corrections administrators, judges, lawyers and media representatives. And, perhaps most importantly, the public needs to be educated in order to allay their justifiable fears and garner their support in the search for long-term, workable solutions.

PART 3—RESOURCE GUIDE

Where to go for further information:

Organizations

American Correctional Association, 4321 Hartwick Road, Suite L-208, College Park, Maryland 20740 (301) 699-7600

Center for Criminal Justice Research, Inc., Prison Overcrowding Project, 1701 Arch St., Philadelphia, PA 19103 (215) 569-0347

CONtact, Inc., P.O. Box 81826, Lincoln, Nebraska 68501-1826 (402) 464-0602

Correctional Economics Center, 1220 King Street, Alexandria, Virginia 22314 (703) 549-7686

International Halfway House Association, P.O. Box 2337, Reston, Virginia 22090-1592 (703) 435-8221

Minnesota Department of Corrections, 430 Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101 (612) 296-6133

National Center on Institutions and Alternatives, 814 North St. Aspah St., Alexandria, Virginia 22314 (703) 684-0373

National Conference of State Legislators, 1125 17th Street, Suite 1500, Denver, Colorado 80202 (303) 623-6600

National Council on Crime and Delinquency, 2125 Center Avenue, Fort Lee, N.J. 07024 (201) 886-2600

National Council on Crime and Delinquency, Research Center West, 760 Market Street, Suite 433, San Francisco, California 94102 (415) 956-5651

National Institute of Corrections, 320 First Street NW, Washington, D.C. 20534 (202) 724-3106

National Moratorium on Prison Construction, 324 C Street SE, Washington, D.C. 20003 (202) 547-3633

National Prison Project, 1346 Connecticut Avenue NW, Suite 1031, Washington, D.C. 20036 (202) 331-0500

Oregon Department of Human Resources, Corrections Division, 2575 Center Street NE, Salem, Oregon 97310 (503) 378-2467

Prisoners and Community Together (PACT), P.O. Box 177, Michigan City, Indiana 46360 (219) 872-0633

Vera Institute of Justice, 30 E. 39th Street, New York, N.Y. 10016 (212) 986-6910

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Department of Justice

STATEMENT

OF

J. MICHAEL QUINLAN
DIRECTOR, FEDERAL BUREAU OF PRISONS

BEFORE

THE

SUBCOMMITTEE ON FEDERAL SPENDING,
BUDGET AND ACCOUNTING
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

CONCERNING

THE FEDERAL PRISON SYSTEM

ON

JULY 21, 1987

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss a situation of growing concern to the Attorney General and myself -- namely, Federal prison overcrowding.

Today, the Federal inmate population is approximately 43,500; an increase of over 19,000 inmates in the past six and one-half years. This represents an 83 percent increase and is concrete evidence of the continuing success of the Administration's Federal law enforcement programs. It is also important to note that -- while our population has substantially grown -- the offense mixture of our inmate population is changing. In 1970, only 16 percent of our inmate population were confined for drug law violations. Over the next decade through 1980, this percentage increased to 25 percent. In only the last six years, the Administration's law enforcement priorities have increased the percentage of drug traffickers in our total population to 37 percent. We anticipate that this percentage will continue to go up, particularly in light of the Anti-Drug Abuse Act of 1986.

Currently, our 43,500 inmates are housed in prison facilities that by contemporary correctional standards should confine 28,000 inmates, a system-wide overcrowded rate of 56 percent. Some individual institutions are overcrowded by more than 100 percent. As you know, Mr. Chairman, prison overcrowding is commonly related to an increased potential for inmate idleness, unrest and litigation. It has been judged as a major contributing factor in some of the worst state prison disturbances.

The current level of prison overcrowding coupled with substantial growth in the future prison population can create a crisis of major proportions in the Federal criminal justice system. In order to preclude this result and insure the future viability of the Federal Prison System, the Attorney General has established a major objective for the Bureau of Prisons. Simply stated, the objective is to expand the capacity of the Federal Prison System to keep pace with projected increases in the inmate population and to simultaneously reduce prison overcrowding. This is reflected in the President's FY 1988 budget.

This Administration and the Congress have strongly supported the current facilities expansion program which has been the largest in Bureau of Prisons' history. Since 1981, the system's capacity has been increased by approximately 4,500 beds through the construction of new housing units at existing prisons, the acquisition and conversion of existing properties to correctional facilities and the construction and activation of new prisons. In addition to these projects, the Congress has appropriated funds to build seven new prisons and several additions to existing facilities which will house almost 7,000 inmates. Construction has already begun on five of these prisons and sites have been selected for the remaining two. The FY 1988 budget now before the Congress requests construction funds for two more prisons and other expansion projects which will house 2,400 more inmates.

While the expansion program to date has been substantial, it clearly is not sufficient to meet both future population increases and reduce overcrowding. The Bureau of Prisons has recently completed a new multi-year expansion plan. I know that you understand, Mr. Chairman, that I cannot review this plan in detail at this time since it is now under review in the Executive Branch as part of the formulation of the President's FY 1989 budget.

However, I can note that the inmate population projection upon which our plan is based is similar to the low range estimates recently submitted to the Congress by the U.S. Sentencing Commission. The Bureau of Prisons has worked closely with the Commission in the development of its projection model. While recognizing the inherent difficulties of any prison projection methodology, I believe that the range of estimates made by the Commission and their underlying policy assumptions are reasonable.

While it is impossible to exactly predict the future Federal prison population, I believe that everyone here today will agree that it will continue to increase -- it is only the degree of growth that is in question. I concur with the Sentencing Commission's position that a major portion of the increases projected by the Commission is not dependent on implementation of the guidelines. Rather, it will result from enhanced Federal investigative and prosecutorial resources already in place and the increased criminal sanctions of the Anti-Drug Abuse Act of 1986.

Mr. Chairman, you have correctly noted that substantial budget resources will be necessary to continue the expansion of the Federal Prison System. In this context, I understand that further hearings may focus in detail on alternatives to new prison construction including increased use of half-way houses, the recent development of electronic devices used in so-called "house arrest" programs and potential use of prisons operated by private sector firms. I want to assure you and the members of this Subcommittee that we are extremely sensitive to the objective of meeting our mission in the most cost-effective manner. We are actively using most of these options at this time and plan to increase their use. However, it is clear to me that public safety will dictate that the majority of our expansion needs will require the construction of new Federal Correctional Institutions.

The Bureau of Prisons has taken several actions to insure that new prison construction is as cost effective as possible. These actions include the use of Federal surplus property or the donation of land to the government at no cost and the use of already proven prison designs and new construction techniques. The design of Federal correctional facilities and use of new security technology is also responsible for prison staffing requirements that are less than occur in most state correctional systems. This is extremely important since construction costs are less than 10 percent of a prison's total "life cycle" cost.

Another area of prison system expansion which is cost effective is the use of military facilities. Several current Bureau of Prisons facilities are located on former military bases and two of our minimum security Federal Prison Camps operate on active bases with outstanding success and cooperation. In this context, we are extremely pleased about Secretary Weinberger's report to the Attorney General in response to Section 1606 of the Anti-Drug Abuse Act. Over the past several weeks, we have carefully analyzed the military facilities identified in this report and believe that several of them can be used by the Bureau of Prisons.

Mr. Chairman, I recognize that the prison expansion program required to meet our objectives is an undertaking of substantial dimensions, both in terms of human and financial resources. It is equally clear that failure to achieve the objective can result in prison overcrowding that could seriously jeopardize the life and safety of Bureau of Prisons staff and inmates. This type of a crisis could quickly lead to "gridlock" in the Federal criminal justice system inviting court intervention and the establishment of prison population "caps", a situation which has occurred in several state correctional systems.

In closing, Mr. Chairman, I want to state that you and several members of this Subcommittee have always recognized the difficult challenges faced daily by the line staff of the Federal Bureau of Prisons. We are extremely appreciative of you and your colleagues' support.

This concludes my prepared statement, Mr. Chairman. I would be pleased to respond to any questions you or your colleagues may have.

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APPENDIX

TESTIMONY OF WILLIAM RHODES
BEFORE THE SUBCOMMITTEE ON FEDERAL SPENDING, BUDGET AND ACCOUNTING OF THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE

21 JULY 1987

Working closely with the Bureau of Prisons, the Sentencing Commission developed a detailed model of prison impact and used that model to project future demands on the federal prisons. As research director at the Sentencing Commission, I had primary staff responsibility for developing that model. I appreciate this opportunity to discuss those projections.

Our methods and results are described in detail in the Supplementary Report on the Initial Sentencing Guidelines and Policy Statements. I will limit myself to a summary.

I. The model

Projecting future prison demands is an inexact science. It requires making various assumptions about the future, for example: the number of criminal convictions, the extent of departures from the guidelines, and the role of plea negotiations under the guidelines. It is complicated further by implementation of new legislation, notably: the Anti-Drug Abuse Act of 1986 and the career offender provision of the Crime Control Act of 1984. We may err when making the necessary assumptions and, consequently, when making projections.

Because it is so difficult to predict future prison demands, we developed separate projections for alternative sets of assumptions. Regardless of the assumptions used, the projections--which I will relate in a minute--remain similar:

with or without sentencing guidelines, the federal criminal justice system must brace itself for expanding demands on the prison system.

We have discussed our assumptions and results with people outside the Commission. We have worked especially closely with the Bureau of Prisons. No one agrees with all the assumptions used in the model. On the other hand, we have not encountered strong resistance to our major conclusions: Future prison increases can be attributed primarily to increases in criminal prosecutions, to the Anti-Drug Abuse Act, and to the career offender provision; the guidelines themselves have a marginal effect beyond those other three causes.

II. Probation under the guidelines

As the Crime Control Act suggests, the incidence of straight probation terms (probation without some confinement as a special condition) will decrease under the guidelines. For crimes of violence, for the distribution of drugs, and for some other types of offenses (such as income tax evasion), the effect is straightforward: fewer offenders will receive probation.

For other crimes--essentially property crimes--the effect is more complicated. The incidence of straight probation will be reduced. However, straight probation will be replaced partly by probation with conditions involving intermittent confinement, community confinement, and by sentences that are to be split between prison and community corrections. The overall incidence of probation--with and without some kind of confinement--is not expected to change radically under the guidelines.

Although the Commission has attempted to reduce probation sentences, probation sentences will not disappear under the guidelines. For example, an unsophisticated, $10,000 bank embezzlement would not require any confinement if the defendant accepted responsibility for his actions. Even a relatively sophisticated, $50,000 bank embezzlement could result in as little as 6 months of intermittent or community confinement.

As was true in the past, first-time offenders who have been convicted of the least serious crimes will be placed on probation routinely. Different from the past, however, some offenders--these include repeat offenders and defendants who are convicted of more serious property crimes--who completely avoided jail time prior to the guidelines will incur jail time when the guidelines are implemented. This change reflects Commission efforts to rationalize existing sentences by treating the white collar fraud offender as severely as the blue collar theft offender and to implement the Commission's view that short, but definite, terms of confinement will help deter such crimes as tax evasion, price fixing, and insider trading.

What are the implications for the prisons of this reduction in probation? The Bureau of Prisons will be required to house an increased number of offenders for short terms in community correction and other minimum security facilities. On any given day, about 800 offenders are incarcerated as "direct commitments" from the courts or as a condition of probation; we project that this figure will increase to about 3,000 under the guidelines. This is roughly half of the total prison impact attributable to the guidelines. It is notable that minimum security facilities and community corrections facilities are significantly less expensive than prisons.

III. Average time served will increase for some crimes

Average time served for most violent crimes will increase under the guidelines. Although the career offender provision accounts for some of this increase, most is attributable tc Commission policy decisions.

Average time served for drug law violations (expect simple possession) will increase dramatically under the guidelines, largely because of the new drug law and career offender provision. For example, given current practices, drug law violators serve an average of 23 months. Had the drug law been in effect when these offenders were sentenced, we project that they would have served an average of 48 months. Thus, the drug law itself doubles the average prison term. Had the career offender provision also been in effect, the overall average would have been closer to 57 months. All-in-all, once the guidelines are taken into account, drug law violators will serve an average of about 58 months--somewhat longer terms than are required by the combined drug law and career offender provision.

When the Commission was constrained neither by the drug law nor by the career offender provision, average sentences under the guidelines are similar to those prior to the guidelines--except, of course, that probation is less frequent. An exception is for income tax violations, for which the Commission made future sentences correspond to the sentences received by other offenders convicted of fraud. Consequently, tax-law violators will serve more time in the future.

These changes in average prison sentences portend the impact of the guidelines on the prisons. I will turn to that impact next.

V. Prison impact

Future prison demands will depend importantly on the number of future criminal convictions, so as a first step in the prison impact projections, we had to estimate future criminal caseload. Our estimates are based on recent trends in federal convictions. We made both "low-growth" and a "high-growth" estimates, thereby providing ranges for future caseloads.

We made projections for 5, 10 and 15-year periods. We are confident of the 5-year projections. We are less confident of the 10-year projections. The 15-year projections are highly speculative.

Even in a low growth scenario, prison populations are projected to grow dramatically. Excluding some nonsentenced detainees, current prison populations are about 42,000. We project that prison demands will increase to 72,000 by 1992 and to 92,000 by 1997. Adopting a high-growth scenario, current populations are projected to increase to 79,000 in 1992 and to 118,000 in 1997.

This is to say that it would not be unreasonable to anticipate a doubling or a tripling in the federal prison population over the next decade. Furthermore, the low growth projections are not much lower, and the high growth projections are not much higher, when our projections are based on alternative assumptions. To repeat my earlier statement: the federal criminal justice system must brace itself for expanding demands on the prison system.

It is important to identify the reasons for this growth, most of which has nothing to do with the guidelines.

First, prison populations have grown by 83 percent during the present administration. We project that this growth would continue, at a somewhat diminished rate, over the decade. Thus, even without any new laws and without the guidelines, prisons are projected to increase by between 45 and 88 percent over the next 10 years. We refer to these estimates as the "baseline."

Second, the Anti-Drug Abuse Act of 1986 requires mandatory minimum terms for many drug law violations, increases the maximum terms for most drug law violations, and defines new conditions that require enhanced penalties. By 1992, the drug law alone is projected to increase demands on the prisons by about 18 percent beyond the baseline; by 1997, the drug law alone is projected to increase demands on the prisons by about 38 percent beyond the baseline. The drug law is a prominent explanation for future demands on the prisons.

Third, the career offender provision of the Crime Control Act of 1984 requires a term at or near the statutory maximum for certain repeat offenders who are convicted of drug law violations and violent crimes. This provision has an additional effect on the prison population, increasing it by about 2 percent in 1992, by about 6 percent by 1997, and by larger amounts in latter years. Over the long run, career criminals will become an increasingly large proportion of the federal prison population.

Finally, we turn to the independent effect of the guidelines. Once we have taken into account current trends in prosecutions, the effect of the new drug law, and the effect of the career offender provision, the prison impact attributable directly to the guidelines is modest. We project the impact to be about 6 percent for 1992 and about 3 percent for 1997. Even when we vary the assumptions made in the projections, the independent effect of the guidelines does not increase much beyond 10 percent.

Our projections indicate large increases in prison populations. Perhaps they are overestimates. We have not factored a deterrence effect into the calculations. Nor have we factored in an incapacitation effect. Although we expect more serious penalties to deter, and while we anticipate that more repeat offenders will be incapacitated, these effects could not be so great as to offset greatly the projected impact on the prisons.

VI. Future directions

The research staff continues to work on this model to correct remaining errors, refine the projections, and in general make the model's results more useful for policy deliberations. One of our projects is to extend the model to project needs for prison security levels. Another project is to provide construction costs and operating costs for different projections. Until these projects are completed, cost estimates are speculative.

Thank you. I would be pleased to answer any questions.

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United States General Accounting Office

GAO Testimony

For Release
Expected at
2:00 p.m.
July 21, 1987

Sentencing Guidelines: What Is Their Potential Impact on Federal Prisons?

Statement of
William J. Anderson, Assistant Comptroller
General
General Government Programs

Before the
Subcommittee on Federal Spending, Budget,
and Accounting
Committee on Governmental Affairs
United States Senate

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today. As you requested, our testimony will present the results of our review work to date on the United States Sentencing Commission's estimates of the impact of its sentencing guidelines on federal prisons.

BACKGROUND

The Comprehensive Crime Control Act of 1984 (Public Law 98-473) established the United States Sentencing Commission as an independent agency within the judicial branch. The Commission is composed of seven voting and two nonvoting members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system, including detailed guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes. The guidelines are intended to reduce unwarranted sentencing disparities among offenders with similar criminal backgrounds who commit similar crimes. Under the guidelines' system, parole will be abolished and sentenced offenders will serve their entire sentences, less any good time credit--time reductions from their sentences for good behavior.

As required by the law, the Commission submitted its proposed guidelines to Congress on April 13, 1987. The guidelines were approved by six of the commissioners, with one commissioner dissenting. The guidelines will go into effect on November 1, 1987, unless Congress passes a law to delay or stop their implementation. In submitting the guidelines, the Commission unanimously recommended that Congress delay their implementation for 9 months, or until August 1, 1988. The Commission wants this additional time for field testing the guidelines, training court officials, and proposing any necessary amendments to the guidelines before they go into effect.

Section 235 of Public Law 98-473 requires GAO to report to Congress within 150 days after the Commission submits its guidelines (by September 10, 1987) on the potential impact of the sentencing guidelines on the federal criminal justice system. In response to that requirement, we have been monitoring the Commission's activities and reviewing drafts of the guidelines. On July 13, 1987, one of your representatives asked us to be prepared to testify today on the Commission's study of the impact of the guidelines on federal prisons.

To address the prison impact issue, we reviewed (1) the Commission's June 18, 1987, Supplementary Report on the Initial Sentencing Guidelines and Policy Statements which contains a summary of the Commission's prison impact study; and (2) a draft of its technical report being prepared to further explain the methodology for its study. We also interviewed Commission officials responsible for preparing the impact study and Federal Prison System (FPS) officials responsible for estimating future federal prison populations and preparing building plans for federal prisons.

The Commission believes that its sentencing guidelines will have a minimal effect on future prison populations. However, the Commission expects there will be significant growth in the federal prison population over the next 10 to 15 years primarily because of the mandatory minimum penalties required by the Anti-Drug Abuse Act of 1986, increases in federal prosecutions and convictions, and increased sentences required by the career offender provisions of the Comprehensive Crime Control Act of

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1984. If the Commission's estimates prove to be accurate, it could cost several billion dollars over the next decade to build prisons for the additional inmates. Also, the increased prison population would, by 1997, add as much as $1 billion a year to the cost of inmate custody, care, and rehabilitation programs.

PRISON IMPACT

Between 1970 and 1986, the federal prison population increased significantly (averaging about 4.3 percent a year), with periods of sharp increases occurring from 1975 to 1978 and 1980 to 1986. From 1978 to 1980, a decrease in prosecutions contributed to a sharp decline in the federal prison population.

-- In fiscal year 1970 the average daily population was about 21,000.

-- In 1975 the population was about 23,000 and grew to about 30,000 in 1978, a 30.4 percent increase over 3 years.

-- The population dropped from 30,000 in 1978 to about 24,000 in 1980, a 20.0 percent drop in 2 years.

-- The population grew from about 24,000 in 1980 to about 39,000 in 1986, a 62.5 percent increase over 6 years.

-- FPS estimates that the average daily population for 1987 will be 42,000, a 7.7 percent increase in 1 year.

As of July 2, 1987, FPS reported that 43,507 inmates were in federal prisons. This was 15,581 (about 56 percent) more than the system's rated capacity of 27,926. An additional 5,031 prisoners were housed in contract facilities.

FPS officials said that overcrowding is the principal issue facing federal prisons. Prison overcrowding increases the likelihood of violence and puts the staff in greater danger. It also results in inmates being housed in less than generally acceptable conditions and makes providing efficient and effective operations and programs more difficult. To address the overcrowding problem, FPS plans to build more prisons and expand the capacities of some existing facilities.

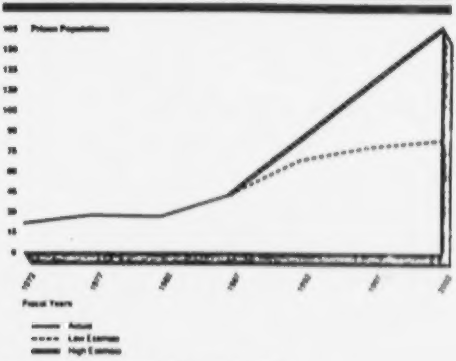
Section 994(g) of Public Law 98-473 directs the Sentencing Commission to estimate the impact of its sentencing guidelines on the federal prison population. This section of the law also requires that the Commission make recommendations to Congress concerning any change or expansion in the nature or capacity of federal correctional facilities and services as a result of the guidelines. On June 18, 1987, the Commission provided a supplementary report to Congress that contained a prison impact study estimating dramatic increases in the future federal prison population. However, the Commission has not yet determined the number or types of facilities that would be needed to house the increased prison population it projects, although it plans to do so.

The Commission's study pointed out problems in forecasting prison populations, including the absence of reliable methods for predicting future crime rates and changes in the level of federal prosecutions and enforcement priorities. The study also noted that uncertainties about sentencing under the guidelines made forecasting the effects of the guidelines on prison populations especially difficult. For example, the study pointed out that the proportion of defendants who plead guilty could change under the guidelines. According to the Administrative Office of the United States Courts, during the 12-month period ending June 30, 1986, about 86 percent of the criminal cases were decided through guilty pleas. Similarly, the authority of judges to depart from the guidelines (even though they must provide a written explanation) creates uncertainty about the ultimate impact of the guidelines.

After pointing out the unknowns concerning the guidelines' effect on future prison populations, the study explains how the Commission estimated this impact. Generally, the Commission analyzed sentencing practices for a sample of about 10,500 offenders who were convicted during fiscal year 1985. Then, working with FPS, the Commission developed a computer simulation model to project future prison population on the basis of a variety of factors, including: (1) current practice; (2) anticipated prosecution trends; (3) the Anti-Drug Abuse Act of 1986 (which requires, among other things, mandatory minimum sentences for certain drug offenders); (4) the career offender provisions of the Comprehensive Crime Control Act of 1984 (which require, among other things, substantial prison terms or terms at or near the maximum prescribed by law for certain repeat offenders); and (5) the guidelines.

Because future prosecution policy cannot be anticipated, the Commission projected prison impact for 1992, 1997, and 2002 using alternative assumptions concerning prosecution/conviction rates, plea negotiation practices, and the extent that judges would depart from the guidelines' sentences. The Commission's prison population estimates range from 67,000 to 83,000 for 1992, 78,000 to 125,000 for 1997, and 83,000 to 165,000 for 2002.[1] Compared to the 42,000 inmates estimated for 1987, these translate into increases which range from about 60 to 98 percent for 1992, 86 to 198 percent for 1997, and 98 to 293 percent for 2002. Figure 1 illustrates the Commission's estimated prison population growth.

Figure 1: Growth in Prison Population From 1972 to 2002



Source: Federal Prison System and U.S. Sentencing Commission

All figures for 1997 and beyond are estimates based on the U.S. Sentencing Commission prison population projections.

The Commission's estimates indicate that the population of federal prisons will increase dramatically primarily because convictions will increase, sentences that do not include confinement (probationary sentences) will be reduced significantly, and the average time served for drug related, violent, and repeated offenses will increase substantially. According to the Commission's study, the use of straight probation without any confinement will decrease under the guidelines for all nine offense types that they analyzed. In addition, the use of some type of confinement combined with probation will increase under the guidelines for six of the nine offense types analyzed. The Commission also estimates that the average imprisonment time will increase under the guidelines for seven of the nine offense types analyzed.

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[1] The Commission believes its 1992 estimates are the most accurate, its 1997 estimates are somewhat less accurate, and its 2002 estimates are very speculative.

The Commission believes that the most significant factors contributing to future prison population increases will be growth in the number of prosecutions and the mandatory minimum sentences required by the new anti-drug law. The Commission attributes some of the growth to the longer sentences required under the career offender provisions of the Comprehensive Crime Control Act. It attributes a relatively modest amount of the increased prison population to the guidelines themselves. Table 1 shows the extent that the Commission believes each of these factors will contribute to growth in the federal prison system from 1987 to 1997 under two of its scenarios.[2]

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[2] We used these two scenarios because they contain estimates that fall between the Commission's lowest and highest estimates for 1997. Also, these are the two basic scenarios that the Commission discusses extensively in its study.

Table 1: Factors Contributing to Growth in Prison Populations 1987 to 1997

Factor	Scenario # 1 Estimated number	Scenario # 1 (Percent)	Scenario # 2 Estimated number	Scenario # 2 (Percent)
Growth due to increased prosecutions	+ 19,000	(38.0)	+ 36,000	(47.4)
Growth due to anti-drug law	+ 24,000	(48.0)	+ 30,000	(39.5)
Growth due to career offender law	+ 4,000	(8.0)	+ 6,000	(7.9)
Growth due to guidelines	+ 3,000	(6.0)	+ 4,000	(5.3)
Total growth	+ 50,000	(100.0)	+ 76,000	(100.0)[a]
Plus 1987 population	42,000		42,000	
Total 1997 population	92,000		118,000	

[a] Does not add to 100 due to rounding.

We are still in the process of reviewing the Commission's methodology for estimating prison impact. On the basis of our work so far, the Commission's methodology appears reasonable. The Assistant Director for Administration of FPS told us that FPS staff worked closely with the Sentencing Commission in developing the Commission's prison population projection model. While recognizing the inherent difficulties of all prison population projection methodologies, this official said that the Commission's range of estimates and their underlying assumptions are reasonable. He added that it is highly probable that FPS will eventually use the Commission's model, with possible modifications, to estimate future prison populations.

ESTIMATED COST OF INCREASED PRISON SPACE

Before the Commission submitted its proposed guidelines and prison impact estimates to Congress, FPS had planned to add 16 new prisons and expand the capacity of 38 (about 81 percent) of the existing 47 correctional facilities at a cost of about $900 million. FPS estimated that their prison population would be 55,200 by fiscal year 1993, and that they would have an overcrowding rate of about 20 percent (which calculates to a base capacity of 46,000). However, that estimate did not include the additional prison space that will be needed because of the Anti-Drug Abuse Act of 1986, the career offender provisions of the Comprehensive Crime Control Act of 1984, or the sentencing guidelines.

FPS' April 1987 cost estimates for new minimum/medium security correctional facilities indicate an average cost per bed of about $66,000. Applying that cost figure to the difference between the Sentencing Commission's estimated population and the approximate 34,500 bed capacity that has been funded by Congress (current capacity of about 28,000 beds plus about 6,500 beds in process) would provide a rough estimate of the cost to build new facilities for the additional prisoners.

Using the Commission's previously discussed 1997 populations of 92,000 and 118,000, FPS would need space for 57,500 to 83,500 additional prisoners at a cost of about $3.8 to $5.5 billion to totally eliminate overcrowding. To achieve a 20 percent overcrowding rate, which is FPS' goal, FPS would need 42,200 to 63,800 more spaces at a cost of about $2.8 to $4.2 billion.

These estimates do not reflect the higher costs likely because of future inflation. Also, the costs could be higher if FPS has to build proportionately more maximum security facilities. Maximum security facilities are more expensive than medium or minimum security facilities. Similarly, costs would be lower if more minimum security facilities were built. Further, the costs could be reduced to the extent that FPS can avoid constructing new prisons by using lesser cost alternatives, such as (1) expanding the capacity of existing federal prisons; (2) placing more offenders in state and local correctional facilities; (3) making greater use of halfway houses; or (4) acquiring facilities no longer needed for their original purpose. FPS officials believe the first two alternatives will not provide much relief because they are already expanding existing facilities to the maximum extent possible and because state and local facilities are currently overcrowded. Any need not met by these four alternatives would most likely have to be satisfied by new construction.

Besides the money needed to provide additional prison space, a greatly expanded prison population would substantially increase the funds needed by FPS to operate and maintain its prisons and to provide for inmate custody, care, and rehabilitation programs. For fiscal year 1986, FPS' operating costs were about $13,100 per inmate. Using that figure and ignoring any inflation or productivity improvements, FPS could need additional operating funds of as much as $650 million to $1 billion annually to house the 50,000 to 76,000 additional prisoners that the Sentencing Commission estimates for 1997.

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This concludes my prepared statement. We hope this information will assist the Subcommittee in its deliberations. We would be pleased to respond to any questions.

FACTORS CONTRIBUTING TO GROWTH IN PRISON POPULATIONS 1987 TO 1997

Factor	Scenario # 1 Estimated number	Scenario # 1 (Percent)	Scenario # 2 Estimated number	Scenario # 2 (Percent)
Growth due to increased prosecutions	+ 19,000	(38.0)	+ 36,000	(47.4)
Growth due to anti-drug law	+ 24,000	(48.0)	+ 30,000	(39.5)
Growth due to career offender law	+ 4,000	(8.0)	+ 6,000	(7.9)
Growth due to guidelines	+ 3,000	(6.0)	+ 4,000	(5.3)
Total growth	+ 50,000	(100.0)	+ 76,000	(100.0)

POTENTIAL COST OF NEW PRISON SPACE
1997 POSSIBILITIES

	Estimated total Population	Net capacity (20% overcrowd)	Needed new capacity[1]	Cost (billions)[2]
BOP	76,000	63,300	28,800	$1.90
Sent. Comm. Low Growth				
Low end	78,000	65,000	30,500	2.01
High end	98,000	81,700	47,200	3.12
Sent. Comm. High Growth				
Low end	100,000	83,300	48,800	3.22
High end	125,000	104,200	69,700	4.60

[1] Net capacity less currently authorized capacity of 34,500.

[2] Needed new capacity multiplied by BOP average cost of $66,000/Bed.

POTENITAL INCREASE IN PRISON OPERATING COSTS
1997 POSSIBILITIES

	Estimated total Population	Current Population	Population Increase	Cost Increase (in millions)
BOP	76,000	42,000	34,000	$ 445
Sent. Comm. Low growth				
Low end	78,000	42,000	36,000	472
High end	98,000	42,000	56,000	734
Sent. Comm. High growth				
Low end	100,000	42,000	58,000	760
High end	125,000	42,000	83,000	1,087

Population increase times 1986 average operating cost of $13,100 per inmate.

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Prepared Statement of Norman A. Carlson, Director, Federal Bureau of Prisons

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you once again to discuss the programs and plans of the Federal Prison System.

Correctional systems throughout the nation are experiencing unprecedented growth in offender populations. In the past two years the Federal Bureau of Prisons has experienced a 21 percent increase in population, from 24,000 inmates to over 29,300 today, an increase of 5,000. A major portion of this growth is the direct result of recently announced Federal law-enforcement efforts directed at drug trafficking and organized crime. New inmate admissions in 1982 for narcotics offenses increased by 23 percent over 1981. At the same time that inmate admissions are increasing so too are the length of sentences imposed by the Federal courts. In the one-year period between 1981 and 1982, the average sentence length for robbery and narcotics offenses increased 7 percent and 11 percent, respectively.

While the prison population is increasing, it is important to remember that only one-third (32 percent) of all offenders under Federal supervision are incarcerated in

Federal institutions. There are many alternatives to incarceration which continue to be extensively used by the courts, particularly for non-violent and non-dangerous offenders. Seven out of every ten offenders under supervision in 1982 were placed in pre-trial diversion programs, probation or parole supervision or placed in community "half-way" houses.

During the recent period of rapid population growth, we have taken a number of steps within existing resources to insure that inmates continue to serve their sentences in a safe and humane environment. The new classification system has been developed to insure that offenders are placed in the least restrictive correctional environment. The percentage of offenders placed in minimum security facilities has increased under this classification system and currently stands at 25 percent of the total sentenced population. At the same time, the escape rate had decreased. We have continued to provide programs of vocational training, education, industrial work experience and recreation. Nevertheless, the current population of over 29,500 offenders is housed in facilities which are rated for a capacity of 24,000. This results in a shortage of 5,500 beds or expressed in other terms—an overcrowding level of over 20 percent.

The long-range planning attempts to project prison populations several years in the future. I want to be the first to admit that population forecasting is far from an exact science. The factors that impact on inmate population levels are many and the relationships are not all that clear, easily understood, or controllable. However, when we look at the Federal inmate population trends and project them into the future using various statistical methods, the conclusion is that, without question, the inmate population will continue to increase during the 1980's.

We currently estimate that the Federal prison population will average at least 30,000 during fiscal year 1984 and will reach 31,300 by fiscal year 1987. This projection is admittedly conservative and averages only two percent growth per year over the five year period between 1982–87. We believe that a conservative estimate is justified to insure that we do not needlessly expand inmate capacity and, thereby, waste scarce Federal resources. I am convinced, however, that the population projections will be reached, and in all probability exceeded.

We currently have funds available for the construction of a Federal Correctional Institution in Phoenix, Arizona which will provide 400 additional beds. Site preparation is currently underway and building construction will begin in November. The facility will be ready for operation in May 1985.

In the fiscal year 1983 Continuing Resolution, the Department received funds to expand seven existing institutions by 780 beds as part of the Attorney General's Organized Crime and Narcotics Program. The 1984 request for this program includes funds for an additional 340 beds at three more existing institutions.

In the authorization request before you, we are proposing the construction of a critically needed 500-bed Metropolitan Correctional Center in Los Angeles, and one 500-bed Federal Correctional Institution in the Northeast. We are also seeking funds for site and planning of an additional 500-bed Federal Correctional Institution in the Northeast region.

The Metropolitan Correctional Center will provide a long-term solution to a serious detention problem in the Los Angeles area. We are temporarily housing over 400 detainees in the Federal Correctional Institution at Terminal Island, California. This is an unsatisfactory situation as the facility was not designed for detention purposes and therefore has major security weaknesses. Also, defendants must be transported considerable distances back and forth to Federal Court at great inconvenience to the judges, the U.S. Marshals Service and to the inmates and their attorneys. With the construction of the Metropolitan Center, the Terminal Island Institution can be converted back to its original mission of housing sentenced Federal offenders and thereby alleviate serious overcrowding in the Western Region.

The two 500 bed Federal Correctional Institutions requested for the Northeast region are urgently needed. In addition to helping reduce overcrowding, the proposed institutions will permit us to keep a higher percentage of offenders closer to their homes. This is a goal which we believe facilitates the maintenance of family ties, thereby increasing the chances of an offender's success following release.

We fully understand the considerable cost of new prison construction and are actively seeking alternatives. For example, surplus property can be converted to correctional use in a short period of time and at a relatively low cost. Recent acquisitions of this nature include the Federal Prison Camps at Boron, California, and Big Spring, Texas. Although we have met some local opposition, we continue our efforts to acquire the former Mt. Laguna Air Force site near San Diego for use as a Federal Prison Camp. We are now exploring the use of the former Windham College property in Putney, Vermont. The existing buildings are owned by the Federal Government and we believe that the property can be converted in a cost effective fashion to an excellent 500-bed minimum security prison camp. We are also looking into the possible acquisition of an educational facility in Sheridan, Oregon, which we believe could be converted to a correctional institution.

While the facilities proposed in our budget constitute a substantial increase in capacity, we would still be overcrowded by at least 16 percent following their activation. If these projects are not approved, we will be at least 24 percent overcrowded by 1987. Given the trend toward longer sentences and more violent offenders, I believe this would be an intolerable level of overcrowding which could lead to increased violence within institutions and higher escape rates. Furthermore, we would expect serious criticism from the Federal Judiciary regarding "conditions of confinement" issues.

The recent tragic murders of two of our staff members is illustrative of the increasing violence we are facing throughout the Federal Prison System. On Christmas day, a staff member was killed during an inmate altercation at the Federal Correctional Institution in Petersburg, Virginia. On February 6, a correctional officer was killed by a group of offenders attempting to escape from the Metropolitan Correctional Center in San Diego. We cannot tolerate such violence and we must act responsibly to assure that staff, as well as inmates, are provided security and protection.

Additional facilities are not the only way that we are attempting to address the problem of overcrowding. The fiscal year 1984 includes a request for an additional $6 million to increase the Community Treatment Center program. This action if approved will permit us to place an additional 500 inmates, who are near release, in centers and thereby reduce our institution population.

As I have stated on a number of occasions, prison space is a finite and increasingly scarce resource in the Criminal Justice System. We must use it wisely in order to maximize its impact. In this context, I continue to support reform of the Federal Criminal Code—particularly the proposal for the establishment of a sentencing commission which would develop sentencing guidelines. As demonstrated in Minnesota, available and planned prison capacity is an important criteria which can be used in developing sentencing guidelines in order to insure that prison space is available for violent and dangerous offenders. At the same time, we cannot fall victim to the "tail wagging the dog" syndrome and permit insufficient prison capacity to thwart our Federal law enforcement efforts. It is a delicate balance that must be continually examined. I believe that the Federal Prison System's fiscal year 1984 authorization request is a realistic one which seeks to maintain a proper balance.

In addition to the facilities proposals, the budget for fiscal year 1984 also requests a program increase of 181 positions, the majority of which are for the medical program. The Federal Prison System is committed to providing comprehensive and high quality health care. The additional staff requested will permit the activation of a newly renovated 105-bed unit at the Springfield Medical Center and will provide increased medical coverage at all institutions.

Mr. Chairman, I also want to comment briefly on the Federal Bureau of Prisons role in assisting State and local correctional agencies. The National Institute of Corrections has, in my opinion, been extremely effective in responding to recommendations of the Chief Justice and the Attorney General's Task Force on Violent Crime by establishing the National Academy of Corrections in Boulder, Colorado. Improved training for correctional officers and administrators is, in the short run, the single most important action that the Federal government can contribute to assisting state and local governments. Since I last appeared before you, the Bureau of Prisons has moved its own staff training to the Federal Law Enforcement Training Center at Glynco, Georgia. This action has not only reduced training costs but has dramatically increased the quality and consistency of training efforts. We allot 10 percent of student capacity at Glynco to state and local correctional personnel. I have received considerable feedback from correctional administrators praising these training programs.

This concludes my formal statement, Mr. Chairman. I would be pleased to answer any questions you or your colleagues may have.

Mr. **Kastenmeier**. Thank you, Mr. Carlson, for that excellent statement.

You have alluded to some trends, the trend toward an increase in the Federal prison population, and some of the building plans that are being developed or implemented. You have indicated that there

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PREPARED STATEMENT OF DIANA R. GORDÓN, PRESIDENT, NATIONAL COUNCIL ON CRIME AND DELINQUENCY

I generally do not put titles on Congressional testimony, but a whimsical one for a presentation on correctional policy popped into my head as I was sitting down to write: It is, "A Pandora's Box of Paradox." I will try to enumerate some of the paradoxes briefly, and then perhaps your questions will reveal additional ones.

But first a little background that will give dimensions to the policy problems of corrections.

The most important background information has to do with the growth of prison populations. The annual average growth rate of the state and federal prison population over the years 1952-81 has been 2.4 percent, twice the annual average growth rate of the American population. But the real story is in the last decade. Between 1974 and 1981 the average annual increase was 7.1 percent, and between 1980 and 1981 the prison population grew by 12.1 percent, an unprecedented climb. While all the figures are not yet in for 1982, if the midyear data held true for the whole year, the increase would be 14.3 percent, another record. On June 30, there were 394,380 state and federal prisoners.

These increases also signal an increase in the incarceration rate. The national rate at the end of September 1982 was 169 per one hundred thousand population, again a record, and more than twice as high as in 1926. (Perhaps a more significant comparison is with 1974, a mere nine years ago, when the national rate was 102, 60 percent of what it is now.) Breaking that rate down somewhat, in 1981, 302 males out of every 100,000 in America were in state and federal institutions; 642 blacks per 100,000 were in prison compared with 101 whites. None of these figures include local jail populations.

Incarceration rates vary considerably from state to state. At midyear 1982 Minnesota had 50 sentenced prisoners per 100,000 population while Nevada had 295. Both states had prisoner increases in 1981 and 1982—Minnesota's small and Nevada's large. (Interestingly, in both states the crime index, as published in the Uniform Crime Reports of the FBI, went down between 1980 and 1981, Minnesota's by 1.3 percent and Nevada's by 3.0 percent). If midyear data hold true for the whole year, nine states will have had more than fifty percent prison population increases during 1982. While the Federal system had a larger than average increase in 1981 (16 percent), its 1982 increase appears likely to be below average.

The massive increase in prison populations has, as we all know, produced a serious overcrowding problem. Of the forty-seven jurisdictions that responded to a 1981 survey on overcrowding, thirty reported shortages of bed space amounting to an average of 14 percent fewer beds than prisoners. Alabama, Georgia, Maine, and South Carolina reported themselves more than 50 percent overcrowded. The problem has contributed to court findings that conditions in more than thirty states are unconstitutional. Prison building programs stimulated in part by overcrowded prisons could cost the nation more than fifty billion dollars by the end of the twentieth century.

The numbers don't convey the real consequences of overcrowding. In California and New York, prison violence is on the increase. Suicides and assaults on prison personnel are up. Overcrowding has been attributed as part of the cause of the recent explosion at Ossining in New York and the New Mexico uprising three years ago. Two experienced reporters from Corrections Magazine, Steve Gettinger and Kevin Krajik, have recently written, in a valuable publication on overcrowding prepared by the Edna McConnell Clark Foundation:

"Overcrowding has made the already-difficult task of running the prisons close to impossible. Many prison administrators have given up trying to supply potentially rehabilitative services; sheer physical control of the institutions has become the main objective. Riots and gang warfare are now constant threats. At the most crowded prisons, there is real question as to whether the staff controls any more than the wall and barbed wire fences that keep the inmates from escaping. Guards are unable to separate the violent prisoners from the non-violent prisoners; guards are often unable to stop stronger inmates from victimizing the weaker ones."

It is in examining the sources and solutions of the overcrowding problem that the paradoxes I referred to emerge. These paradoxes must be confronted and dealt with if effective policy is to rescue us from the grip of a corrections problem which threatens to bankrupt state treasuries and deplete resources desperately needed for happier ends than human confinement.

Paradox No. 1: Crime rates and prison rates operate quite independently of one another. Most researchers would accuse Michael Sherman, a Fellow at the Hudson Institute in New York, of only slight oversimplification when he said, "The crime rate goes its merry way, and the imprisonment goes its merry way, and they have nothing to do with one another." Juvenile crime has been going down since the mid-seventies, but penalties are becoming more severe. In 1981, index crimes in every category but robbery declined, but incarceration rose. Neighboring states with very different incarceration rates have similar crime rates. There are many ways to look at the relationship between crime and imprisonment (and of course in some limited areas there are correspondences), but generally associations are weak. Mandatory and long determinate sentences have produced only a corrections crisis; they embody an approach to dealing with offenders, not an approach to dealing with crime.

Paradox No. 2: The public, whose anger about crime fuels the policies which fill up the prisons, is unwilling to pay for housing the criminals who are processed under the new policies. Although voters in California and New Jersey have recently supported bond issues for prison construction, New York, Virginia, and Oregon defeated them in 1981, and several polls reveal significant taxpayer resistance to additional levies to pay for prisons. A corollary to this paradox is that people simultaneously say (again in polls) that criminals should get tougher treatment and that prisons don't effectively rehabilitate or deter. Perhaps the most one can say is that the public is confused.

Paradox No. 3: While the greatest social harm is generally acknowledged to be that caused by truly violent crime, the number of property offenders in prison is rising faster than the number of violent offenders. A comprehensive study of the national picture found that in 1978 the proportion of prisoners incarcerated for violent crimes was 47 percent, as opposed to 52 percent in 1973. While there has been no such study of later years, informal reports from corrections administrators suggest that in many states the bulk of the increase in prison populations is in property offenders. This is perhaps because the dominant direction in sentencing policy has been toward mandatory terms for repeat felonies, whether violent or property crimes. Property crime is far more common than violent crime—about nine times as likely. Assuming that the application of mandatory sentences is even four times likelier for violent recidivists than for property recidivists, we can conclude that far more of the latter receive mandatory sentences.

Paradox No. 4: State prisons are being built to ease overcrowding, but the greatest likelihood is that, without changes in sentencing policies, the new institutions will be full as soon as they are built. A prison takes four or five years to build. Even if that period of time can be shortened with the modular structures now being developed in some places, the population increase is likely to outstrip the rush to build. And what if the new space must be used to make present conditions—with present population levels—Constitutionally acceptable? Getting out from under court orders may take precedence over increasing the capacity of the institutions.

Paradox No. 5: While sentencing policies are sending more people to prison for longer periods of time, many officials of the system responsible for dealing with convicted offenders—and many legislators and budget directors, too—have become convinced that fewer people should be sent to institutions, that release policies should be modified to let more people out sooner, and that there are more effective punishments for some offenders outside prison. It used to be difficult for attorneys general and prison administrators and assembly committee chairmen to consider the possibility that prison was not working and was unnecessary for some offenders. But that was before they saw that maximum security cells cost $70,000 each to build and $30,000 a year to maintain, before they realized that any prison bond issue is likely to cost the taxpayers (in the long run, taking into account debt service) three times the face amount of the issue, before they had seen that the Michigan Overcrowding Emergency Powers Act and the Minnesota Sentencing Guidelines Commission, to name two important experiments, can relieve overcrowding without threatening public safety. These days the exploration of heretofore innovative solutions to overcrowding is mainstream thinking among corrections decision-makers around the country. During the last year NCCD has conducted—on its own or with Rutgers—seminars on prison crowding that have involved several hundred key governmental decision-makers in seventeen states. We have talked to them about early release and diversion programs and administrative good time, and they have listened thoughtfully and receptively. What is more impressive, they have gone home and started to spread the information they have picked up, adapting some model solutions to their own local situations.

And what are the solutions? I have distributed to the committee a recent NCCD booklet, "Controlling Prison Populations," which outlines a number of approaches and what we have learned from their implementation—sometimes successful, sometimes not—around the country. If it is possible to introduce that booklet into the record, its nineteen pages might reach others who are concerned with the prison overcrowding problem. In any case, I would like to speak briefly about the measures the booklet considers.

We looked at "back door options" and "front door options," that is, measures that accelerate the inmate's return to the community and measures that reduce prison admissions. Perhaps the most promising back door option to be used in an overcrowding emergency is the creation of a pool of prisoners eligible for early parole when the institutional population exceeds capacity. Longer-term measures are the establishment of re-entry and work release furloughs which can help reintegrate the offender into the community as well as relieving overcrowding. Early release has worked best in Michigan, and the furlough programs have been successful in Connecticut and South Carolina.

The front-door options may be harder to implement, since they require the involvement of many actors—police, prosecutors, and judges. But sentencing guidelines have been implemented with success in Minnesota, and Georgia's Diversion Centers hold promise for influencing judges to try non-penal punishments. Virginia's Community Diversion Incentive Act has great potential, since it can be used only after an offender is sentenced to prison, thereby insuring that it operates as a real alternative to incarceration.

While the prison overcrowding problem is generally seen as a state issue, this is becoming less and less true. The Federal Bureau of Prisons can no longer readily house federal prisoners and pre-trial detainees in state and local institutions. Federal commitments are rising, and the possibility of further increases looms large if legislation mandating prison terms and eliminating parole release is passed. The federal system must develop careful plans for relieving overcrowding, plans that go beyond the construction of costly new prisons.

The Federal government has an important role in helping states to develop policies and programs that address the fiscal and programmatic problems that overcrowding creates. Increased funding for the National Institute of Corrections technical assistance and educational programs could spread the word to many state government officials who are receptive to new ideas and simply need help in implementing them. No one solution works for every jurisdiction, so targeted consultation is more valuable than the imposition of a single policy direction. What is most important is that the Federal government assist the states in finding cheaper, more effective ways to deal with non-violent offenders than putting them in prison.

The very fact that we are now trying to figure out, for the state systems, what are the best measures for releasing and diverting people is part of a final paradox that underlies much policy work in corrections. We are trying to deal here with infection by providing pain-killers rather than antibiotics. Using the parole system creatively as a safety valve for bulging prisons is important to do—but only if it is impossible to reduce the numbers coming into the prisons and the amount of time they stay. Without repeal of the mandatory sentencing policies that have created this problem, its effects will accumulate and more and more complex devices will be found to get around it. The Federal government has a chance to learn from the mistakes of the states, not to follow them down a path of thorns and brambles.

Much is said about the public's loss of faith in the criminal justice system, and correctional policy often seems driven by public despair. But in the long run the average citizen surely prefers to invest in schools and hospitals that build bodies and minds, rather then in prisons. Public disaffection with criminal justice is likely to become active resentment if correctional spending depletes our national resources for other domestic priorities.

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COMMENTS OF ALVIN J. BRONSTEIN, EXECUTIVE DIRECTOR, THE NATIONAL PRISON PROJECT OF THE AMERICAN CIVIL LIBERTIES UNION

I am pleased to appear before the Subcommittee, at the invitation of the Chairman, to comment on correctional policy and practices throughout the country. I am appearing in my capacity as Executive Director of the National Prison Project of the American Civil Liberties Union Foundation.

The National Prison Project since 1972 has sought to strengthen and protect the civil and constitutional rights of adult and juvenile prisoners, to improve conditions in the nation's prisons and jails, and to develop rational, less costly and more humane alternatives to traditional incarceration. We have also engaged in efforts to devise model prison procedures and regulations.

In furtherance of the activities described above, the Project's staff attorneys and other staff members are engaged in the representation of prisoners incarcerated in penal institutions throughout the country. The Project has been and is presently involved in many important cases concerning the rights of prisoners. In addition, the Project's staff has been consulted by correctional officials and legislative committees in various states. I personally have been a consultant to the National Institute of Corrections of the Department of Justice, various state Departments of Corrections, and to the American Bar Association's Joint Committee on the Legal Status of Prisoners as well as others.

Before we can begin to talk about correctional policy, or the lack thereof, we must take note of the most dramatic and dangerous situation that exists in the country's correctional facilities today. That is the booming prison population in our federal, state and local jails and prisons and the horrendous overcrowding that has resulted at a time when there are fewer and fewer resources available. According to the most recent report of the Bureau of Justice Statistics, U.S. Department of Justice, there were 405,371 state and federal prisoners incarcerated as of September 30, 1982. There was a 9.9 percent increase in prisoners during the first nine months of 1982, compared to an 8.6 percent increase during a similar period in 1981 and, according to a Bureau of Justice Statistics Bulletin,[1] "Should this rate of growth continue for the next two years, the U.S. prison population will exceed one-half million before the end of 1984." State prison population and overcrowding, of course, directly impact local jails which are often forced to house sentenced state prisoners in already overcrowded facilities.

We know all too well what the possible consequences of the current situation can be. A recent report by the Correctional Association of New York indicates that conditions at the Attica Correctional Facility are the same now as they were just before the uprising in 1971. And, the Attorney General of New Mexico, writing about the tragic riot of 1980 at the Penitentiary in Santa Fe has said:

> "Throughout its history, the Penitentiary of New Mexico has suffered from neglect. The new Mexico prison has always waited at the end of the line for public money, and elected officials have turned their attention to the ugly problems of the penitentiary only when the institution has erupted in violence and destruction. Lack of space, inadequate programs and understaffing, have all been part of the prison's tradition."—Report of the Attorney General on the February 2 and 3, 1980 Riot at the Penitentiary of New Mexico, issued June 1980.

These are not isolated incidents. Beginning in the summer of 1981 in Michigan, there have been dozens of riots, disturbances and hostage incidents in prisons and jails across the country resulting in injuries, death and destruction. Even the Federal Bureau of Prisons has not escaped and a recent disturbance at the Petersburg, Virginia, Federal Correctional Institution resulted in the unfortunate death of a correctional staff member.

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[1] October/November 1982 NCJ-84875.

The annual report published recently by the National Prison Project, which surveys the status of major pending court actions on a state-by-state basis, shows the low level of civilization of our society when it comes to our nation's prisons. According to the report, thirty states, the District of Columbia, Puerto Rico, and the Virgin Islands are operating prisons under court orders because of violations of the constitutional rights of prisoners. Each of these orders has been issued in connection with total conditions of confinement and/or overcrowding which resulted in prisoners being subjected to cruel and unusual punishment in violation of the Eight Amendment to the Constitution. In addition, legal challenges to major prisons are presently pending in 9 other states and there are challenges pending in 8 states in which there are already court orders dealing with 1 or more institutions.[2]

If it were not so sad, we should all be sitting here and laughing at the title of these hearings—Correctional Policy. With very few exceptions, there is no rational correctional policy in this country. In its "Preliminary Report to Congress on Prison Population and Policy Choices" (September 1977), ABT Associates, Inc., in a study commissioned by LEAA, found: "Currently in most jurisdictions State government is, at best, only able to react to the situation [of prison overcrowding] with responsive policies. There appears to be very little indication of comprehensive proactive policy-making with regard to prison population."

Thus, the federal prison system and most of the states are planning massive expenditures of funds for prison construction based upon present and immediately past prison counts, without examining a wide range of other matters: demographic factors; unemployment rates; contemplated changes in sentencing schemes; economic factors; the impact of judicial intervention; and the current national movement in standard setting. Planning then is being done in a manner that is policy-blind rather than being policy-informed.

Above all, the public is being pandered to, lied to, and fed enormous portions of rhetoric instead of some insight into reality. And herein lies your responsibility. Without serious challenge by politicians who know or should know better, the public is being told: that more imprisonment will somehow impact crime rates; that longer and mandatory sentences will somehow satisfy the call for "law and order"; that sending more people to prison will somehow deter others from committing crimes; that their streets will be safe if offenders are sent to prison; that given enough resources, our prisons can "rehabilitate" offenders.

We know that all or most of the above is pure myth and, yet, most politicians actively contribute to, or acquiesce by their silence in, this rhetoric.

In spite of the lack of real planning and policy making, hundreds of millions of dollars are being poured into prison construction at a time when dollars for human needs are so scarce. Between July 1979 and July 1980, twenty-three new prisons were opened by state correctional systems at a cost of over $100 million. Today, more than two-thirds of the states have proposed to build or have under construction at least one major correctional facility. The Department of Justice's budget request to the Congress for fiscal 1984 includes a Buildings and Facilities request of $97,142,000 for the Bureau of Prisons, up $90,475,000 from 1983. And, of course, it will cost billions of dollars to amortize the debt financing and operation of these new prisons.

It is indisputable that American prisons are dangerously overcrowded, but new construction is not the solution. The reason for the rapidly growing prison population is not the "crime wave", but rather the rash of new stiff sentencing laws that have been recently passed by state legislatures. In the past, trial judges retained wide discretion in imposing sentences. Now, all but twelve states have replaced discretionary sentencing with minimum prison sentences for many crimes. In Indiana, for example, burglars and rapists are serving 100 percent more time than in the past and armed robbers 30 percent more. Indiana's prison population now exceeds its capacity by 30 percent and its correctional facilities are powder kegs. In New York City between 1971 and 1980 the percentage of defendants sentenced to more than three years rose from 26 percent to 85 percent. Critics of the new sentencing laws rightly say they were passed in a climate of public hysteria without careful examination of their impact on the criminal justice system or public debate.

While new prison construction might temporarily ease the situation, it will have no long term effect on either the crime problem or the problem of prison overcrowding. We already lock up twice as many people per capita as Canada, and four times as many as West Germany. In fact, only two industrialized countries lock up more people than we do: the Soviet Union and South Africa. Yet, in a report sponsored by the federal government, the National Institute of Justice found "little evidence that crime rates are directly related to imprisonment use." [3] In that same study the National Institute of Justice also found that historically state prison populations increase dramatically in years following prison construction, regardless of any other factors such as crime rates of conviction.

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[2] A copy of the entire status report is appended hereto.

We also need to dispel another myth by looking at who is filling our prisons and causing this massive overcrowding. Contrary to the public perception, our prisons are not filled with dangerous people. According to the National Institute of Justice study, while the numbers of prisoners doubled in the past 10 years, the percentage of non-violent prisoners in custody has increased and the percentage of violent prisoners has gone down. According to a report just released by the North Carolina Citizens Commission on Alternatives to Incarceration, 55 percent of the people in prison in that state committed non-violent offenses and 16 percent of the total are presently incarcerated in state prisons for misdemeanors. It is no wonder that North Carolina had 17,107 persons in prison on September 10, 1982, and one of the three highest state incarcertion rates in the country.

The majority of federal and state prisoners are confined in maximum security institutions. According to the National Institute of Justice study, in 1978 over one half were housed in maximum security, little more than one third in medium security, and only 11 percent in more open, minimum security facilities. Virtually all inmates assigned to minimum security were classified as minimum security risks, while slightly less than two-thirds of those in maximum security were classified as a high security risk. These figures are a composite of many classification decisions based on different criteria with "varying degrees of vigor", and reveal little about the true need for secure housing levels by these inmates.[4]

A look at states which have been required by a court order to adopt a policy of the "least restrictive" rule of classification is revealing. In Alabama, for instance, the court ordered reclassification of state prisoners, only 9 percent of whom were classified as community custody, the most minimum security risks. After reclassification, the community custody figures rose to 32 percent and the maximum security population went from 34 percent down to 3 percent.[5]

The Attorney General's Task Force Report on Violent Crime issued on August 17, 1981, agreed, as other studies have shown, that only 15–20 percent (NIJ Study shows 15 percent) of all inmates fall into the category of high security risks. On the other hand, 70 percent of the prison space is presently allocated to the maximum security category. Obviously there is more than ample space to house the serious offender without construction of more facilities.

What then are some of the possible solutions and alternatives to a continuing escalation of prison population? We must begin by reversing the current trend toward longer and harsher sentencing schemes.

Justice E. Leo Milonas, Deputy Chief Administrative Judge of the New York City courts, has written: "It cannot be asserted too strongly that the problem of crime—which is as disturbing to judges as it is to everyone else—cannot be solved by an approach that relies primarily on punishment by incarceration." And yet that is our approach, despite overwhelming evidence that it should be used sparingly. Incarceration is a destructive and dehumanizing experience which further alienates the inmate from society and breeds more crime. As Norman Carlson, head of the Federal Bureau of Prisons, has stated, "Jails are tanks, warehouses. Anyone not a criminal when he goes in will be one when he comes out." And most prisoners do come out. Unless we are prepared to put people away for thirty or forty years for all crimes, which even the most zealous law and order advocates are not calling for, we are going to continue to see a stream of damaged, embittered and criminalized human beings emerging from our prisons.

The potential penalty of long-term incarceration does not by itself deter crime. Most studies show that it is the certainty of punishment that deters crime, and the probability of getting caught is the most important factor in assessing that certainty. Yet the apprehension rate for serious street crimes is so low that most offenders simply do not expect to be caught and imprisoned. After all, when the speed limit is not enforced, drivers speed. The fact that there is a stiff penalty on the books for speeding has little effect on people's behavior if they know that when they speed, they are not likely to get caught. It's the same way with crime. In that respect, the heaviness of the potential penalty does not deter very much, if the probability of getting caught in the first place is low. To quote from the National Institute of Corrections, an arm of the Department of Justice, "The current use of incarceration as a penal sanction shows no logical relationship to crime rates." [6]

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[3] "American Prisons and Jails", National Institute of Justice, October 1980.

[4] "American Prisons and Jails," Vol. I, p. 56, 58.

[5] Report of the Prison Classification Project to the U.S. District Court, Middle District of Alabama, in Civil Action No. 74-203N (July 18, 1977).

Incarceration serves no rehabilitative purpose and does not reduce the recidivism rate of convicted offenders. In fact with the young, incarceration actually increases recidivism. A highly praised study of Philadelphia youth, which traced the lives of 10,000 boys born in 1945, revealed the following sobering fact: the more punitive the treatment (institutionalization, fine or probation), the more likely the youngster is to commit more serious crimes with greater rapidity than those treated less harshly.[7] "We must conclude", wrote the authors of the study, "that the juvenile justice system, at its best, has no effect on the subsequent behavior of adolescent boys and, at its worst, has a deleterious effect on future behavior."

Incarceration is used discriminatorily against blacks and other minorities. Blacks are currently imprisoned at almost ten times the rate of whites, with no real correlation to crime rates.

Incarceration is our most expensive form of punishment and places an enormous burden on the taxpayers of this country. A single prison cell costs from $30,000 to $80,000 to construct and it costs from $10,000 to $25,000 to keep a prisoner in prison for one year.

In spite of this indictment of incarceration as a primary form of punishment, it is being used more today than ever before. Politicians, anxious to satisfy their constituents' demands for a solution to crime, have enacted harsh, mandatory sentencing laws. In Indiana, for example, a two year prison sentence must be imposed for second time shoplifting! The number of offenders sentenced to prison was 80 percent higher in 1978 than in 1968 and the upward trend continues. According to Griffin Bell, President Carter's Attorney General and a former federal judge, "We've put too many people in prison and made it meaningless." Bell urges that more consideration be given to alternatives to incarceration and we agree.

The ACLU believes that incarceration should be the sanction of last resort. A judge should be required to impose the least severe measure necessary to protect society. There are alternatives which have been highly successful, although their use has been far too limited.

The State of Alabama has established several work release centers which now accommodate 20 percent of the state prisoners. During the first eight months of 1981, these inmates: Earned $1,940,780; paid the Department of Corrections for housing $498,308; paid the Department of Corrections for transportation $46,752; paid their dependents $111,049; paid in federal taxes $207,682; and paid in state taxes $34,783.

If these 1,000 inmates had been in prison instead, they would have cost the taxpayers of Alabama $10,000,000 for one year.

New York City's Community Service Sentencing Project in Brooklyn and the Bronx has handled more than 400 offenders who were each sentenced to perform seventy hours of unpaid service for the benefit of the community. They cleaned senior citizen centers, youth centers and parks, installed smoke alarms for the elderly, and performed other useful work. Some continued on as volunteers after completing their court-imposed obligations.

The "Earn-It Program" in Quincy, Massachusetts finds jobs for defendants who are sentenced to make victim restitution for theft, personal injury or property damage. The program produces $200,000 in restitution each year. Seventy-five percent of the participants successfully complete the program; the remaining 25 percent serve jail sentences.

The House of Umoja in Philadelphia has contributed to stopping gang killings which once plagued the city's ghettos. Called a sanctuary by its founders, it offers youthful offenders who are committed to its care vocational training and jobs, education, and the support of an extended family type social structure.

Work release, community service, victim restitution and effective vocational training and education are not just more humane alternatives to incarceration. They cost a lot less and they appear to work a lot better than warehousing people in jails and prisons.

Finally, a few words need to be said about the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997. Many of us, including Members of the Congress, had high hopes that the passage of the Act would motivate the Department of Justice to seek deliberately but actively to address the problem of gross violations of the Constitution which pervade our jails and prisons. They have been deliberate in maintaining the status quo and the Department's main action in the past two years has been to purge the Civil Rights Division of its most dedicated lawyers.

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[6] "Request for Proposals," National Institute of Corrections, Fiscal Year 1982, July 1981, p. 14.

[7] Wolfgang, Figlio and Sellin, "Delinquency in a Birth Cohort," Univ. of Chicago Press, 1972.

With one exception, the Department of Justice has not filed a single case against a jail or prison since the passage of the Act. The one exception, Cook County Jail in Chicago, arose in a case that the Department filed before the Act, was dismissed for lack of standing, and merely refiled after the passage of the Act. The Department has conducted some investigations but now, over two years into this administration, the message to state and local authorities is clear: "Do not worry about the conditions in your jails and prisons because we have no intention of doing what the Congress told us to do." In addition, only one state, Virginia, has submitted a set of administrative grievance procedures which has been certified under the watered-down criteria substituted by this Attorney General for those promulgated by the last one.

I would respectfully suggest that it is time for this Committee, which spent so many long hours on this legislation, to conduct an oversight hearing on its enforcement.

Reproduced from U.S. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. Correctional policy. Oversight hearings, 98th Congress, 1st session. Washington, G.P.O., 1985. p. 49-52.

Prepared Statement of Judge Sylvia Bacon, Immediate Past Chairperson, Criminal Justice Section, on Behalf of the American Bar Association

Mr. Chairman and Members of the Committee: My name is Sylvia Bacon. Although I am a Judge of the Superior Court of the District of Columbia, I appear on behalf of the 295,000 lawyers and judges of the American Bar Association. I am currently the last retiring Chairperson of the ABA's Criminal Justice Section.

The Association thanks you for this opportunity to contribute its views on the role of the Federal government in responding to the prison crisis. In order to place the problem in perspective, let me begin by giving you an overview of the "crisis" the nation is facing.

Statistics on immate population illustrate part of the problem. This raw data is available because Congress has mandated that statistics be kept on the number of state and federal prisoners. These statistics have been regularly kept since 1926.

The most recent available information shows that there were 29,403 prisoners under the jurisdiction of federal correctional authorities on September 30, 1982. This number represents a 4.5 percent increase from the 28,133 federal prisoners in custody nine months earlier on December 31, 1981.

This increase is cause for concern because it reverses a previous declining trend for the number of federal prisoners. For example, in 1980, the federal prison population was 24,363. This represented an 8 percent decrease from the previous year.

On the state level, the prison population has been steadily increasing. In general it has been increasing at a higher rate than the federal prison population. On December 31, 1981, the prison population in state institutions was 340,639. Nine months later—on September 30, 1982, it had risen to 375,968. This represented a 10.2 percentage increase during just the first nine months of 1982.

These statistics are sobering. However, as I mentioned earlier, they reveal only a part of the "crisis." They do not reflect the toll being paid by the inmates who are subjected to the prison environment. More importantly, they do not reflect the price paid by society for the loss of potentially productive citizens who are consigned to prison when another form of penalty would be more appropriate. As you may know it is widely thought, though admittedly unproven, that the experience of imprisonment increases the likelihood that some offenders will commit additional crimes after release.

I would like to share with you the American Bar Association's view on what steps could be taken by the federal government to alleviate both the statistical crisis facing our nation's penal institutions, and also the societal crisis that faces our nation as a result of inappropriate policies to handle overcrowding in correctional facilities. I wish to emphasize that these remarks are applicable to correctional institutions at all levels. This includes not only the federal and state prisons, but also the much neglected and forgotten local jails where the crisis is often the most acute.

The information I will provide to you stems from the "ABA's Standards for Criminal Justice" and the recently approved ABA Criminal Justice Section Task Force on Crime Report.

The ABA Criminal Justice Section Task Force on Crime was appointed in March of 1981. It was composed of nine persons with diverse backgrounds in criminal justice areas such as prosecution, defense, members of the bench (both state and federal, as well as trial and appellate), law school academia, and criminal justice administration. Through its Final Report it sought to present practical solutions to crime-related problems facing our justice system. The Report was approved by the ABA House of Delegates on February 9. A portion of it pertains to the issue of "Corrections." It provides information on (1) federal financial assistance, (2) federal technical assistance, (3) use of facilities, and (4) prison industries. This information is relevant to your deliberations today.

FEDERAL FINANCIAL ASSISTANCE

The ABA Task Force Report recognizes that Federal funding will be essential to ease the prison crisis on the state and federal levels. The ABA has approved the Task Force's list of successive priorities to which federal funding should be applied to maximize its benefits.

First, it should be used to assist in the development of rational policies concerning the most appropriate use of scarce prison space. To this end, these policies should reflect the principle that "The sentence imposed in each case should call for the minimum sanction which is consistent with the protection of the public and the gravity of the crime." This concept is espoused by Standard 18-2.2 of the ABA Standards for Criminal Justice.

The policies should give guidance to the correctional system through (1) establishing goals of corrections, (2) defining the maximum population to be maintained in a prison, (3) defining the specific category of offenders to be housed in penal institutions, (4) delineating the range and type of noninstitutional settings to be maintained, and (5) providing a comprehensive mechanism for ensuring that judicial sentencing decisions adequately implement the correctional goals and priorities for use of scarce institutional space.

Second, funding is instrumental to developing alternatives to incarceration. Given the cost of maintaining penal institutions and their acknowledged ineffectiveness, a very critical need exists for a re-examination of the use to which we put them. Scarce prison space must be reserved for those whom we most need to confine. Federal dollars can assist in the development and promotion of alternatives to incarceration as acceptable and purposeful means of providing appropriate penalties for convicted wrongdoers.

Third, federal funds are needed to assist in improving current correctional facilities and programs with a goal of bringing them up to constitutional and professional standards. Standard-setting groups have recommended no further construction of dormitory housing for prisoners and have urged that existing units house no more than 50 inmates. In 1973, the National Advisory Commission on Criminal Justice Standards and Goals stated in its Commentary to Standard 11.1 on Corrections that, "The design of the institution should provide for privacy and personal space by the use of single rooms with a floor area of at least 80 square feet per man . . ." Viewed in light of this space requirement alone, few penal institutions measure up to this standard established ten years ago.

Finally, after these other three measures are considered, additional prison facilities should be constructed if it is determined that the facilities are essential to the protection of the public. The ABA believes that the construction of these facilities should be an alternative to which the federal government should lend financial assistance as a last resort. Construction projects should receive federal funding only if consideration has first been given to developing a correctional plan, establishing alternatives, and replacing inadequate institutions.

The Association believes that these steps should be considered prior to undertaking additional prison construction because they are efforts that will have long term effects that will positively impact on both the present and future problems faced by correctional agencies. Furthermore, federal monies should not be exclusively thrown into brick and mortar when there is no evidence that more prison space is going to provide an answer to the violent crime rate. In addition, prison construction is costly and a long term process.

FEDERAL TECHNICAL ASSISTANCE

In addition to providing financial assistance, the federal government can play a vital role in easing the nation's prison crisis by making technical assistance available to state and local governments. The National Institute of Corrections has been a valuable federal resource for state and local corrections. It has an exemplary record of conducting its affairs and establishing its priorities in a thoughtful and well informed manner.

Recommendation 55 of the Attorney General's Task Force on Violent Crime proposes providing resources to the National Institute of Corrections to engage in studies. The ABA agrees with this Recommendation for financing studies by the NIC. However, it believes that the subjects and priorities for the studies should be the prerogative of the Institute as set by its Advisory Board.

Recommendation 46 of the Violent Crime Task Force Report is another useful proposal that the federal government should pursue. It calls for adequate resources to be provided for the training of state and local correctional personnel through the National Academy of Corrections.

USE OF FACILITIES

In August of 1981, the Attorney General's Task Force on Violent Crime submitted its Final Report. Recommendations 3 and 56 proposed that the federal government make available abandoned military bases and surplus federal property for use by state and local correctional agencies. The ABA endorses this concept as a legitimate way for the federal government to relieve the severely overcrowded and substandard conditions that exist in many state and local facilities. However, a program of this nature should not be used as a means of transferring to the states inadequate federal prisons that are being closed because they do not meet federal standards. Furthermore, the transfer of any facilities should be accompanied by assurances that the state or local authorities will have sufficient resources to staff, program and operate any facilities transferred in compliance with constitutional and professional standards.

PRISON INDUSTRIES

The ABA has endorsed the development of meaningful programs of prison industry. Some states, most notably Minnesota, have made significant strides in providing such programs for inmate populations. In the past, the federal government has played a role in encouraging experimentation with various models of prison industry programs. These efforts should be intensified.

Amendments to the Justice System Improvement Act of 1979 have authorized the establishment of seven pilot projects in state correctional institutions. It is through experimental programs such as this that the federal government can help point the way to better rehabilitative activities in our nation's penal institutions.

In December of 1981, Chief Justice Burger expressed strong views that tangible benefits would be derived from the development of "factories with fences." A number of state and federal laws inhibit the establishment of such programs. Other institutional factors also act as barriers. Nevertheless, the initial results where these prison industry programs have been established has been generally positive and the federal government should take the necessary steps to see that their positive aspects are encouraged.

CONCLUSION

The American Bar Association commends these measures to the Subcommittee in its consideration of the "prison crisis." We are gratified that you have taken the initiative to consider this timely subject—too often the issue is ignored.

I hope the American Bar Association's views make a contribution to your work and provide some guidance to the Subcommittee on this subject. We urge the Subcommittee to exercise its authority to bring about reasonable solutions to the critical problems that face correctional facilities at all levels of government throughout the United States.

U.S. Department of Justice
Bureau of Justice Statistics

Reproduced from U.S. Department of Justice. Bureau of Justice Statistics. Population density in State prisons. Washington, The Department, 1986. 7 p.

Bureau of Justice Statistics
Special Report

Population Density in State Prisons

By Christopher A. Innes, Ph.D.
BJS Statistician

December 1986

This Special Report examines one of the most serious problems facing our corrections system today—the sufficiency of housing resources. Based on the 1984 Prison Census, which collected detailed information on over 100,000 housing units at 694 State prisons, it examines the amount, nature, and use of housing space in our Nation's State prisons. Other important aspects of correctional resources addressed by the prison census, such as detailed information on staffing, educational and work programs, and support services, await further research.

Special thanks are due to the nearly 700 wardens who expended substantial time and effort to complete the highly detailed prison census. Now available through the Criminal Justice Archive at the University of Michigan, the 1984 Prison Census provides our most comprehensive source of information on prison resources in the United States.

Steven R. Schlesinger
Director

The 694 State prisons in operation on June 30, 1984, provided an average of 57 square feet of living space per inmate in general and special housing and confined inmates to their housing units for an average of 11 hours per day. Other findings from the 1984 Prison Census include:

- Nationally, 34% of inmates were housed in single-cell units; 24% were double-celled; and the remaining 42% were housed in units with three or more inmates.
- Housing units with two inmates had the highest density, with an average of 34 square feet per inmate. Inmates in single cells had an average of 68 square feet, or twice as much room per inmate.
- About 1 in 5 inmates resided for 10 hours or more per day in a general housing unit that provided less than 60 square feet of floor space. Nearly 1 in 5 prisons had at least 40% of their inmates residing in these conditions. Almost three-fourths of State prisons, housing 59% of all inmates, had 10% or less of their inmates residing in such conditions.
- Population densities were highest in prisons in Southern and Western States, in larger institutions, in maximum security facilities, in male-only prisons, and in the oldest prisons.
- Between 1979 and 1984, the opening of 138 new State prisons and the renovation or expansion of existing prisons added nearly 5.4 million square feet of housing space, an increase of 29%. Inmate population, however, increased 45% over the same period. As a result, the average square feet per inmate dropped 11%.
- The number of correctional officers grew faster than the inmate population between 1979 and 1984, resulting in a decrease in the number of inmates per officer from 4.6 to 4.1.
- The total percentage of inmates housed in less than 60 square feet changed little since 1978, but a higher proportion were living in multiple occupancy housing in 1984.
- There was little evidence that population density levels were directly associated with elevated death rates, inmate-on-inmate rates of assault, or the frequency of institutional disturbances. Rather, such events tended to occur more frequently in maximum security facilities, regardless of their population densities.

Introduction

Between 1930 and 1984 the State prison population more than tripled, from 115,314 to 415,796.[1] About two-thirds of this increase, however, occurred between 1975 and 1984. This recent growth has placed substantial demands on correctional resources such as housing, staff, support facilities, and programs. This report examines the first of these, focusing particularly on the amount of housing space available per inmate, the use of multiple occupancy, and the amount of time inmates are confined to housing units.

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[1] See *Prisoners in 1984*, BJS Bulletin, NCJ-97118, April 1985.

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The 1984 Prison Census

A complete census of all State-operated confinement facilities was initiated in 1984 to determine how much space was available to house the Nation's prisoners and how it was being used. Data collection was sponsored by the Bureau of Justice Statistics and was conducted by the Bureau of the Census. The facility census gathered information from all State-operated correctional facilities and the District of Columbia's prison system.

To be included in this study, a facility needed to be staffed by State employees, used primarily for State prisoners, and in operation on June 30, 1984. There were a total of 694 such facilities. Excluded were privately operated facilities, military or Federal facilities, facilities operated and administered by local governments, and community-based facilities.[1] (Community-based facilities are those where 50% or more of the residents depart regularly and unaccompanied for work, study, school, or other activity. In 1984 there were 209 State-operated community-based facilities with 13,354 inmates.)

Each of these 694 prisons described all of its housing units, defined as sleeping quarters—any area where inmates spend the night—in use on June 30, 1984. This excludes, for example, classrooms, recreational or work areas, or other areas of prisons not used for sleeping quarters. For each of the more than 180,000 units in use, they reported the rated capacity of the unit, its exact floor space, the average number of hours per day inmates were confined to the unit, and the number of inmates housed on that date. They also provided information on the unit's security designation and use (general housing, protective custody, administrative segregation, disciplinary action, sick or injured, work release, or other).

The facilities provided additional information about the institution as a whole, including staffing, programming, and expenditures, and on the security classification, age, size, and other characteristics of the physical plant.

Basic patterns in population density

On June 30, 1984, the 694 State prisons in operation maintained 381,955 prisoners in 180,468 housing units with a total floor space in excess of 23 million square feet (table 1). The South accounted for the largest proportion of the Nation's prisoners (44%) and the largest proportion of the total available space used for inmate housing (42%). The lower number of units in the South and West, relative to the number of inmates being housed, indicates a greater use of multiple housing in those regions.

About 85% of all housing space in correctional facilities was used for general inmate housing, and about 88% of the population resided in such units (table 2). About 8% of the occupied prison housing space was used for special purposes such as protective custody, administrative custody, or disciplinary action. Because special housing creates unique staffing and program demands, its use has an impact on the allocation of prison resources of

Table 1. State prisons, housing units, total housing space, and prisoners, by region, June 30, 1984

	Number of prisons	Number of occupied housing units	Total occupied housing space	Number of prisoners
U.S. total	694	180,468	23,700,785 sq. ft.	381,955
Northeast	104	44,756	4,111,814	66,302
Midwest	139	45,198	5,799,268	77,665
South	330	60,515	9,990,151	167,313
West	121	29,999	3,799,552	70,675

Table 2. Distribution of housing space and inmates in State prisons, by type of housing and region, June 30, 1984

	Occupied housing space			Number of inmates		
	General	Special	Other	General	Special	Other
U.S. total	20,129,908 sq. ft.	1,776,379 sq. ft.	1,794,498 sq. ft.	335,282	32,671	14,002
Northeast	3,690,764	208,671	212,379	58,674	6,001	2,627
Midwest	4,733,721	409,272	656,275	68,496	7,210	1,959
South	8,460,320	795,428	734,403	148,032	13,865	5,416
West	3,245,103	363,008	191,441	60,080	6,595	4,000

Table 3. Population density characteristics of State prisons, June 30, 1984

	Percent of all inmates	Average square feet per inmate	Percent of inmates in multiple occupancy	Average number of hours per day confined to unit
All prisons	100.0%	57.3 sq. ft.	66.5%	11.2 hours
Number of persons per unit				
One inmate	33.5	66.7	0	12.3
Two	23.3	34.4	100.0	11.8
3-5	3.4	45.8	100.0	11.3
6-49	15.6	63.8	100.0	10.7
50 or more	23.9	61.8	100.0	10.3
Housing unit use				
General housing	87.8	57.2	70.1	10.4
Special purpose	8.5	57.1	30.0	18.8
Other	3.7	126.3	83.4	11.8
Security designation				
Maximum security	33.4	52.8	48.9	13.1
Medium	44.7	57.3	71.9	10.8
Minimum	21.9	64.3	81.8	9.5
Age of facility				
Over 100 years	11.8	49.2	42.8	12.5
50-99	22.7	56.8	58.7	11.5
25-49	17.6	53.0	77.7	10.7
15-24	13.3	53.8	75.3	11.2
5-14	19.5	60.8	73.6	10.8
5 or less	15.1	64.9	68.0	10.8
Size of facility				
1-499 inmates	23.2	66.6	73.9	10.3
500-1000	26.9	58.1	69.4	11.1
More than 1000	50.0	52.7	62.9	11.8
Facility houses				
All males	91.3	57.0	66.0	11.4
All females	3.4	64.7	66.3	9.9
Both	5.3	57.0	58.4	10.4

Note: Data refer to inmates in general and special housing except under "Housing unit use" where "Other" is shown for comparison. Percentages may not total to 100 because of rounding.

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[1] For information on local jails see The 1983 Jail Census, BJS Bulletin, NCJ-95536, November 1984.

Table 4. Number of State prisons, number of inmates, average square feet per inmate, and percent in multiple housing, by use of unit and State, June 30, 1984

	Number of prisons	General housing			Special housing			Other housing		
		Number of inmates	Average square feet per inmate	Percent of inmates in multiple occupancy	Number of inmates	Average square feet per inmate	Percent of inmates in multiple occupancy	Number of inmates	Average square feet per inmate	Percent of inmates in multiple occupancy
U.S. total	694	345,282	57.3	70.1	32,671	57.1	30.0	11,930	93.3	61.9
Alabama	12	7,068	59.6	81.8	464	57.7	.9	139	77.3	77.0
Alaska	12	1,428	71.4	76.7	119	66.0	52.1	43	49.8	72.1
Arizona	12	6,337	77.0	76.4	634	61.5	89.1	63	230.1	19.0
Arkansas	7	3,262	76.2	76.6	304	70.0	91.8	98	126.1	65.3
California	36	32,607	48.0	89.2	3,479	47.8	19.9	1,064	48.8	78.1
Colorado	9	2,847	76.1	27.9	922	96.1	12.9	17	128.5	94.1
Connecticut	13	4,337	49.8	44.1	278	53.6	53.2	440	39.0	37.0
Delaware	6	1,714	87.8	43.3	5	60.0	0	78	72.3	15.6
District of Columbia	5	1,991	80.1	81.4	414	57.3	12.6	132	89.3	100.0
Florida	40	21,180	54.4	85.0	7,202	64.3	32.6	414	54.9	96.9
Georgia	23	11,240	61.3	79.2	943	62.3	21.2	970	680.4	47.7
Hawaii	7	1,127	37.6	93.4	167	33.5	82.0	421	20.4	99.8
Idaho	3	962	43.7	91.1	83	52.4	50.6	46	41.7	100.0
Illinois	29	13,861	57.3	62.8	1,449	36.6	17.5	367	73.9	33.8
Indiana*	11	6,138	52.4	78.3	471	51.4	24.9	87	90.3	62.2
Iowa	10	2,290	63.0	47.6	333	49.7	4.8	82	95.1	61.4
Kansas	7	3,233	38.9	73.4	447	52.2	9.4	37	69.1	78.4
Kentucky	10	4,392	71.6	64.1	136	61.3	7.4	8	37.4	37.5
Louisiana	11	8,287	71.7	89.2	865	80.6	61.7	333	77.7	81.2
Maine	4	831	49.6	60.0	63	58.3	0	11	54.3	0
Maryland	14	10,623	49.7	55.6	1,433	41.3	50.1	299	113.3	69.2
Massachusetts	17	3,914	60.4	40.2	433	50.3	29.3	188	65.5	38.0
Michigan	29	11,799	66.6	34.0	881	56.9	0	471	90.0	36.9
Minnesota	7	1,873	63.9	4.7	149	74.1	1.3	224	83.7	4.0
Mississippi	6	3,887	49.9	99.3	443	50.2	41.2	229	49.3	100.0
Missouri	11	5,812	47.9	70.2	898	34.4	18.2	153	32.8	94.8
Montana	3	790	55.9	58.1	61	64.6	0	1	140.0	0
Nebraska	5	1,480	61.6	51.4	75	59.9	29.3	78	103.7	89.7
Nevada	8	2,426	54.3	71.4	479	54.9	37.6	164	38.5	90.6
New Hampshire	1	276	61.7	12.7	61	41.9	13.6	138	88.1	27.8
New Jersey	11	9,240	64.0	65.1	704	53.1	0	298	83.1	72.9
New Mexico	4	1,247	77.5	27.8	273	66.1	0	22	66.4	0
New York	41	28,036	66.8	38.1	2,268	59.4	7.0	942	93.6	21.5
North Carolina	79	13,516	54.7	84.1	1,139	61.8	17.9	1,230	80.4	68.6
North Dakota	2	427	69.2	29.3	4	52.0	0	6	73.0	0
Ohio	13	14,736	53.0	81.2	2,237	57.2	51.3	314	103.3	69.1
Oklahoma	18	5,391	62.2	71.3	325	81.2	1.2	687	52.9	77.6
Oregon	7	3,183	48.6	72.5	213	47.8	2.8	13	203.6	92.3
Pennsylvania	9	10,782	53.2	54.0	894	53.6	23.9	102	81.2	99.0
Rhode Island	6	919	61.4	66.7	130	69.6	77.3	32	111.1	93.6
South Carolina	29	6,690	44.8	88.1	539	61.7	39.7	304	56.7	13.2
South Dakota	2	727	49.8	53.1	72	48.3	38.9	2	60.0	0
Tennessee	12	6,482	56.2	91.4	973	34.0	37.9	221	134.9	81.6
Texas	27	33,274	38.9	86.1	2,833	41.3	48.1	334	87.8	34.7
Utah	2	1,178	67.6	30.9	230	50.0	0	44	118.0	77.3
Vermont	6	412	39.3	64.6	36	68.0	44.4	36	50.1	98.1
Virginia	41	8,650	66.7	62.1	614	70.1	5.9	63	115.8	60.3
Washington	13	6,080	47.2	80.3	299	55.6	26.8	51	60.0	49.3
West Virginia	3	1,283	73.6	58.7	130	94.5	70.8	47	287.6	100.0
Wisconsin	17	4,013	69.7	26.0	224	62.2	4.5	70	98.5	52.8
Wyoming	3	646	89.7	23.9	36	78.0	0	3	78.0	0

* Seventy-two units in Indiana, housing 72 inmates, could not be classified and are excluded.

all sorts, including physical space.[3] About 9% of all inmates were in such special housing, thereby segregated from the general housing population. Finally, some housing (listed as "other" in table 2) is routinely used for other purposes such as infirmaries or, in a few cases, special programs. Because of the unusual nature of this housing, it has been excluded from the computations of average square footage per inmate presented below.

Nationally, about a third of all inmates were in single-person cells with an average of 68 square feet of living space each (table 3). Nearly 1 in 4 inmates were residing in two-person cells averaging about 34 square feet per person. Many of these may have been housed in cells originally intended for single occupancy.

Overall, inmates in either general or special purpose housing had an average of about 57 square feet of living space. About 70% of the inmates in general housing and about 30% of those in special housing were in multiple units.

Those living under a minimum security level of custody had more room per inmate (64 square feet) than in other security designations, but were more likely to be in multiple housing (81%). Inmates under maximum security had the least amount of room (53 square feet) but were also least likely to be in multiple housing (49%). Older and larger facilities were most densely populated but used less multiple occupancy housing.

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[3] See [illegible], [illegible] and [illegible], *The Special Management Inmate*, National Institute of Justice, March 198[illegible].

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Table 5. Cumulative distribution of inmates in State prisons, June 30, 1984

	Total number of inmates*	Percent of inmates in housing units with: Less than 40 sq. ft.	Less than 50 sq. ft.	Less than 60 sq. ft.	Less than 80 sq. ft.
U.S. total	367,953	27.9%	44.5%	62.0%	83.8%
Northeast	63,675	16.8%	30.4%	51.3%	78.9%
Midwest	75,706	25.4	41.2	58.7	87.3
South	161,897	31.6	49.6	65.1	83.9
West	66,675	33.2	50.8	68.4	84.0
Unit size					
One inmate	123,215	2.0%	18.1%	44.4%	79.2%
Two	88,564	76.0	92.4	94.9	98.3
3-5	12,530	51.2	65.6	76.5	87.8
6-49	57,580	18.3	37.4	59.6	76.5
50+	88,064	19.5	37.1	53.5	80.1
Unit use					
General housing	335,282	28.8%	45.0%	61.8%	83.6%
Special	32,671	17.9	42.2	64.4	86.0
Other	14,002	27.8	47.1	52.0	71.4

*Refers to inmates in general and special housing except under "Unit use" where "Other" is shown for comparison.

There were also substantial differences among the States. In five States—Hawaii, Idaho, Mississippi, Tennessee, and Texas—90% or more of the inmates in general housing shared their confinement quarters with other inmates (table 4). Average square footage per inmate ranged from 37.8 to 51.2. By contrast, in six States—Colorado, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming—30% or less of the general housing inmates were residing in multiple occupancy units. Among these States, average square footage ranged from 42.2 to 89.7.

Twelve States reported that at least 50% of the inmates in special housing were being held in multiple occupancy quarters. This may reflect problems in the allocation of available space in those States, since segregated quarters by definition are normally single-occupant housing.

Nationwide, inmates housed in less than 40 square feet made up 28% of the regularly housed population (table 5). Less than a fifth of all inmates in regular housing had 80 square feet or more per person.

The actual square footage of floor space per inmate varied considerably by region. In the South and West about half the inmates lived in units providing less than 50 square feet of floor space; nearly a third had less than 40 square feet of floor space. The Northeast had the lowest percentage of inmates in less than 40 square feet.

As noted above, cells housing two inmates provided the least amount of space per person, with 3 out of 4 inmates in double cells receiving less than 40 square feet of floor space. By comparison, only 2% of those housed in single cells had less than 40 square feet of floor space.

Trends in population density, 1979-84

Since 1979, the opening of 128 new State prisons and the renovation or expansion of existing prisons added nearly 5.4 million square feet of housing space (table 6). The total increase in space, 29%, was exceeded, however, by a 45% growth in the number of inmates. For all housing types (including infirmaries and other residential space), prisons in 1979 provided an average of 69.5 square feet of floor space per inmate. In 1984, average space per inmate in State prisons was 7.6 square feet less (61.9 square feet).

Per-inmate reductions in space since 1979 were greatest in Southern States, from 74.9 to 58.7 square feet. In 1984, however, Western States averaged the lowest per capita space (53.8 square feet). Only in the Midwest did capacity expansion exceed the increase in prisoner population.

A similar 1978 survey of prisons found that 65% of the Nation's inmates were housed in less than 60 square feet.[6] The June 30, 1984, prison census indicates that 62% of inmates at that time were similarly housed (table 7). The proportion of prisoners in multiple occupancy units, however, increased from 59% to 67%, and the proportion in multiple occupancy units with less than 60 square feet per inmate rose from 43% to 47%.

Combining average space and confinement time

A fuller picture of population density in State prisons emerges when the space available per inmate is combined with the amount of time each day an inmate is confined to his living unit. Standards established by the American Correctional Association call for 60 square feet per single cell provided that inmates spend no more than 10 hours per day there and at least 80 square feet when more than 10 hours are spent there.[7] Advisory guidelines issued by the U.S. Department of Justice in 1980 proposed a standard of at least 60 square feet for no more than 10 hours per day or at least 80 square feet for more than 10 hours.[8]

Other factors contributing to the totality of conditions within facilities must be considered to evaluate fully issues of prison population density, but

Table 6. Comparison of housing space and number of inmates in State prisons, June 30, 1979, and June 30, 1984

	Number of prisons 1979	Number of prisons 1984	Total square feet of occupied housing space 1979	Total square feet of occupied housing space 1984	Number of inmates 1979	Number of inmates 1984	Average sq. ft. per inmate 1979	Average sq. ft. per inmate 1984	Percent change, 1979-84, in: Square feet of occupied housing space	Percent change, 1979-84, in: Number of inmates
U.S. total	568	694	18,329,376	23,706,762	263,553	381,955	69.5	61.9	29.3	44.9
Northeast	85	104	2,680,206	4,111,814	40,700	67,297	65.9	61.1	53.4	65.3
Midwest	101	130	3,865,478	5,789,240	59,399	77,661	65.1	74.7	49.8	30.8
South*	292	330	9,118,294	9,986,151	121,700	167,313	74.9	58.7	9.6	37.5
West	90	121	2,665,368	3,799,552	41,744	70,691	63.8	53.8	42.6	69.3

Note: All data refer to general, special, and other housing.
* The South showed an increase of more than 2 million square feet in new facilities built since 1979. However, there was a reduction of space at facilities existing in 1979 due to closings of facilities, conversions of prisons to other uses, and conversion of some prison housing space to other prison purposes.

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[6] See *American Prisons and Jails, Vol. III: Conditions and Costs of Confinement*, National Institute of Justice, October 1980.

[7] *Manual of Standards for Adult Correctional Institutions*, American Correctional Association, August 1977.

[8] *Federal Standards for Corrections*, Department of Justice, 1980.

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with respect to the amount of housing space available and the number of hours inmates are confined to their housing units, the standards of 60 square feet and 10 hours per day have appeared repeatedly.

About a third of all inmates in State prisons were confined to quarters for 10 hours or more per day (table 8). About a fifth of all inmates resided in less than 60 square feet of space for 10 hours or more. Those residing in these conditions in multiple occupancy units constituted 17.2% of all inmates; those residing in these conditions in single occupancy units were less than 5% of all inmates.

At the other extreme were inmates with an average of more than 60 square feet of living space to which they were confined for less than 10 hours per day. These constituted 27.1% of all inmates.

Characteristics of high density prisons

The combination of space per inmate and the amount of time confined there can also be examined for an entire facility. While some proportion of the inmates in any facility may be living in high density conditions, the image of a crowded prison is one in which that proportion is high enough to have a significant influence on the institution as a whole.

About 4 out of 5 prisons had less than 40% of their inmates housed in less than 60 square feet for 10 hours or more per day (table 9). The majority of prisons (56%) had no inmates living in these conditions. The highest density prisons, those in which 40% or more of the inmates resided in less than 60 square feet for 10 hours or more per day, comprised 18% of the Nation's prisons. About a quarter of the inmate population was incarcerated in one of these highest density prisons.

Percent of inmates confined to:	
Lowest density prisons	34.0%
Low density prisons	25.1
Medium density prisons	16.6
Highest density prisons	24.4

Regions varied in the number of highest density prisons and the percentage of the inmate population housed in them. The South, with the largest number of inmates and prisons, also reported the largest number and percentage of highest density prisons (23.8%). In the Northeast, nearly 2 out of 3 prisons were found to have the lowest levels of population density, a slightly higher

Table 7. Comparison of population density in State prisons, March 31, 1978, and June 30, 1984

	Number of inmates		Percent in multiple occupancy		Percent in less than 60 sq. ft.		Percent in less than 60 square feet and in multiple occupancy	
	1978	1984	1978	1984	1978	1984	1978	1984
U.S. total	228,552	381,955	58.8%	66.5%	65.0%	62.0%	43.4%	47.1%
Northeast	30,389	66,302	15.3	41.8	52.6	51.3	12.1	26.2
Midwest	54,708	77,665	46.5	58.4	52.5	58.7	31.0	39.2
South	107,184	167,313	81.8	77.4	76.8	65.1	66.8	55.9
West	36,271	70,675	41.7	73.2	59.0	66.4	18.5	36.4

Source for 1978 figures: Mullen, J., and B. Smith, American Prisons and Jails, Vol. III: Conditions and Costs of Confinement, National Institute of Justice, 1980.

Table 8. Distribution of inmates of State prisons by size of general housing unit, occupancy, and hours confined per day, June 30, 1984

	Percent of inmates in housing units with: Less than 60 square feet	60 or more square feet	Total
Single occupancy	12.3%	17.7%	30.0%
Hours confined per day:			
Less than 10 hours	7.6	12.3	19.9
10 or more hours	4.7	5.4	10.1
Multiple occupancy	49.4	20.6	70.0
Hours confined per day:			
Less than 10 hours	32.2	14.8	47.0
10 or more hours	17.2	5.8	23.0
Total	61.7%	38.3%	100%

Note: Based on the 100,212 inmates in single occupancy general housing and the 234,829 inmates in multiple occupancy general housing. Special housing is excluded since, by definition, inmates in such housing generally are kept in their housing units and are not eligible to participate in regular prison programs.

Table 9. Distribution of State prisons by population density, June 30, 1984

	Number of prisons	Percent of prisons by population density category*: Lowest	Low	Moderate	Highest
U.S. total	694	55.8%	17.3%	8.9%	18.0%
Northeast	104	64.4%	18.3%	8.7%	8.7%
Midwest	129	62.8	12.4	7.8	17.1
South	332	47.6	20.8	7.8	23.8
West	129	62.8	12.4	13.2	11.6
Average daily population					
Less than 500 inmates	411	69.3%	11.8%	4.9%	13.1%
500-1000	139	38.1	20.8	16.5	24.7
More than 1000	144	21.5	28.8	24.3	26.6
Facility security level					
Maximum security	184	27.1%	22.1%	18.0%	32.8%
Medium	293	44.7	24.1	12.8	18.4
Minimum	211	84.7	7.1	1.4	6.7
Other level	3	33.3	0	0	66.7
Facility houses:					
All males	613	55.8%	17.1%	7.8%	19.2%
All females	47	68.1	14.9	10.6	6.4
Both sexes	34	44.1	17.6	26.5	11.8
Age of facility					
Over 100 years	37	21.6%	24.3%	16.2%	37.8%
50-99	111	40.5	21.6	11.7	26.1
25-49	141	48.9	21.3	8.5	21.3
15-24	95	55.8	18.9	7.4	17.9
5-14	162	61.7	14.2	7.4	16.7
5 years or less	138	74.6	10.1	3.6	11.6
Not known	1	0	0	0	100.0

Note: Percents may not sum to 100% because of rounding.
*Categories refer to the percentage of inmates in regular housing in each prison in less than 60 square feet for more than 10 hours per day: Lowest - no inmates residing in these conditions; Low - 1-19% of inmates; Moderate - 20-39%; and Highest - 40+%.

proportion than prisons in the Midwest and the West.

Large prisons, those with an average daily population of more than 1,000 prisoners, made up 15% of the Nation's prison facilities but housed more than half its inmates. These institutions were more likely to be facilities with the highest population density. Among large prisons, 3 out of 10 were in the highest density categories compared to about 1 in 7 of the smaller prisons (less than 500 inmates). Further, large prisons tended to be significantly older, with an average age of 52 years, compared to 25 years for smaller prisons. This kind of housing was most common in the Northeast and Midwest, where over half of the inmates were housed in facilities more than 60 years old.

Population density also varied by the custody level of the facility, the sex of inmates housed, and the age of the facility. Nearly 37% of the maximum security prisons in the Nation were classified as having the highest population density compared to about 6% of minimum security institutions. The percentage of male-only prisons with the highest density housing was also much greater than the percentage of female-only prisons. Three out of four prisons built between 1980 and 1984 reported the lowest density conditions. By contrast, the oldest prisons (built more than a century ago) were most likely to be institutions with the highest density.

Effects of population density

A number of previous studies have examined the relationship between increased population density or occupancy in prison and observed changes in the physical or emotional conditions of inmates. While some studies conclude that the effects are generally negative, others conclude that such effects do not vary consistently with increased population densities.[7]

Data from the 1984 Census for the annual period prior to June 30, 1984 indicate that the greatest number of inmate deaths, assaults, and institutional disturbances generally occurred in medium and maximum security facilities; the least number occurred in minimum security facilities (table 10).

Table 10. Number of deaths, inmate assaults, and disturbances in State prisons, by population density and security classification, 1984

	All	Number of incidents in state prisons by population density category			
		Lowest	Low	Moderate	Highest
Illness deaths					
Minimum security	35	26	4	4	1
Medium	190	69	81	13	27
Maximum	226	39	97	14	76
Suicide deaths					
Minimum security	3	1	1	1	0
Medium	48	15	10	12	11
Maximum	55	6	17	8	24
Homicide deaths					
Minimum security	2	2	0	0	0
Medium	41	10	9	11	11
Maximum	46	3	14	11	17
Inmate assaults					
Minimum security	1,057	901	96	30	29
Medium	4,138	2,887	718	104	427
Maximum	3,176	811	907	163	1,331
Disturbances					
Minimum security	25	24	1	0	0
Medium	176	113	36	64	23
Maximum	346	25	94	108	119

Note: See table 9 for definition of density categories. Counts refer to the 12-month period from July 1, 1983, to June 30, 1984.

Table 11. Rates of deaths, inmate assaults, and disturbances in State prisons, by population density and security classification, 1984

	Number of incidents per 1,000 inmates in state prisons by population density category				
	All	Lowest	Low	Moderate	High
Illness deaths					
Minimum security	.71	.88	.73	1.20	.30
Medium	1.01	1.09	1.28	.88	.67
Maximum	1.73	1.47	2.35	1.88	1.63
Suicide deaths					
Minimum security	.06	.03	.18	.34	0
Medium	.26	.24	.21	.32	.30
Maximum	.40	.23	.41	.30	.31
Homicide deaths					
Minimum security	.04	.05	0	0	0
Medium	.22	.18	.19	.29	.27
Maximum	.36	.11	.34	.34	.36
Inmate assaults					
Minimum security	1.56	23.82	17.22	9.01	14.47
Medium	1.86	31.64	15.80	15.10	20.42
Maximum	6.16	32.15	22.00	24.23	29.38
Disturbances					
Minimum security	.51	.63	.18	0	0
Medium	1.47	1.42	.76	1.71	.57
Maximum	2.66	.94	2.04	4.86	2.64

Note: See table 9 for definitions of density categories. Data are based on average daily populations for the 12-month period from July 1, 1983, to June 30, 1984.

These frequencies can also be expressed as rates of occurrence for every 1,000 inmates residing in prisons of various security levels and of differing population densities (table 11). For each type of negative event a consistent pattern can be seen. Maximum security facilities had higher rates of occurrence than medium security institutions, and medium security institutions had higher rates of occurrence than minimum security institutions.

When density levels are compared with equivalent security grades, no clear pattern emerges. The highest density maximum security facilities, for example, evidenced the highest rate of suicide but had a rate of homicide lower than that reported in moderate density prisons and about the same as that in low density prisons. Moreover, for prisons of each security level inmate-on-inmate assaults were most prevalent in the lowest density prisons. Similarly, institutional disturbances in minimum and medium security facilities were most prevalent in prisons with the lowest population densities. In general, no consistent pattern emerges from these data indicating that the incidence or prevalence of these negative events increases with greater population densities.

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[7] For recent discussions of this topic based on available empirical evidence see, D. Ellis, "Crowding and Prison Violence: Integration of Research and Theory," in Criminal Justice and Behavior, Vol. 11, Sept. 1984 and G. Gaes, "The Effects of Overcrowding in Prison," in M. Tonry and N. Morris (eds.), Crime and Justice, An Annual Review, Vol. 6, University of Chicago Press, Chicago, 1985.

The kinds of inmates housed in facilities of different security grades, then, may be a more important factor than population density for understanding variation in the rates at which inmate deaths, assaults, and disturbances occur. In addition, it remains to be determined whether rates for certain events, such as illness, deaths, or suicides, are more likely to occur in prison than they occur outside prison for comparable race, age, and sex groups.

Finally, there is some evidence that correctional systems may respond to pressures of population growth by increasing the level of supervision over inmates. The 527 prisons that were included in both the 1979 and 1984 Censuses experienced a 34% increase in their inmate populations and a 29% expansion in their housing space, but a 43% increase in their number of correctional officers. These prisons reported more suicides in 1984 than in 1979 but fewer homicides. Total staff increases nationally in State prisons between 1979 and 1984 were identical to the increase in the number of inmates (45%); however, since most of the personnel increase over the period was among correctional officers, the number of inmates per officer actually dropped from 4.6 to 4.1.[8] Thus, though inmates in State prisons may have had less space available per person in 1984 than in 1979, the improvement in staffing may have helped to control the prevalence of some negative events.

Methodology

This report is based on information supplied by each of the State prisons in operation on June 30, 1984. Each prison reported the size, occupancy, and use of each type of housing unit. For example, a facility might report having 30 cells, each 65 square feet, housing 24 inmates. In this case, six of the cells are assumed to be empty and each inmate therefore has 65 square feet. If the facility reported that 36 inmates were housed in the units, the occupancy of the cells was distributed on the assumption of minimum density. Thus 22 of the cells were assumed to have one inmate each with 65 square feet and 8 of the cells were assumed to have two inmates ("doubled bunked") with each inmate having 32.5 square feet.

Data for the District of Columbia differ from prisoner counts published in Prisoners in 1984, which reported 4,834 inmates at yearend, because this report only deals with the 2,507 inmates under the District of Columbia's jurisdiction and housed in one of its prison facilities at midyear 1984.[9] This report, therefore, does not reflect changes in the way the District of Columbia is housing both jail and prison inmates since June 30, 1984.

Death rates and assault rates were computed using reports of incidents from July 1, 1983, to June 30, 1984. Disturbances included incidents described by prison officials as riots, food fasts, or strikes (by inmates). No prison reported more than five suicides or more than six homicides in the 12-month period. The rates reported are based upon the average daily population during the same time period. Although the actual population at risk will be higher because of movement in and out of an institution, the average daily population, as reported by the prison, was the best available estimate.

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[8] In 1979 there were a total of [illegible] full-time staff working in correctional institutions, of which [illegible] were classified as correctional officers. On June 30, 1984, State prison employees numbered [illegible], of which [illegible] were correctional officers.

[9] BJS bulletin, [illegible], April 1985.

Bureau of Justice Statistics Special Reports are prepared principally by BJS staff under the direction of Joseph M. Bessette, deputy director for data analysis. The report was written by Christopher A. Innes with the guidance and assistance of Lawrence A. Greenfeld, corrections unit chief. It was edited by Frank D. Balog. Marianne Zawitz provided assistance in data presentation. Marilyn Marbrook, publications unit chief, administered report production, assisted by Millie J. Baldea and Jeanne Harris. Data collection and processing were conducted by Richard Meyer, Regina Yates, and Pauline Fain of the U.S. Bureau of the Census.

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- Criminal justice "hot" files: Criminal justice information policy series, 75 pp., NCJ-101850, 1/87
- Population density in State prisons (BJS special report), NCJ-103204, 12/86
- State and Federal prisoners, 1925-85 (BJS bulletin), NCJ-102494, 12/86
- Data quality policies and procedures: Proceedings of a BJS/SEARCH conference, 82 pp., NCJ-101849, 12/86
- 1986 directory of automated criminal justice information systems, NCJ-102260, 1,000 pp., 12/86
- Capital punishment, 1985 (BJS bulletin), NCJ-102742, 11/86
- Tracking offenders: White-collar crime (BJS special report), NCJ-102867, 11/86

Crime and Justice Facts, 1985

Crime

The criminal justice response

Sentencing and corrections

Sources

Crime and Justice Facts, 1985 summarizes much of what BJS has learned about crime and justice in the United States since December 31, 1985. It is intended to bridge the gap between the first and second editions of the Report to the Nation on Crime and Justice, a comprehensive statistical portrait of crime and justice in the United States, first published in October 1983.

Crime and Justice Facts, 1985 may be ordered (NCJ-100757) from the Justice Statistics Clearinghouse, NCJRS, P.O. Box 6000, Rockville, MD 20850, toll-free 800-732-3277 (local number 301-251-5500). Postage and handling are charged for bulk orders.

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National Institute of Justice / *Construction Bulletin*

December 1987

Acquiring New Prison Sites:

The Federal Experience

Wade B. Houk

With the population of Federal prisons now almost 60 percent over capacity, part of the long-term solution to crowding involves developing new institutions. As a result, the Federal Bureau of Prisons is engaged in the largest facilities expansion program in its history.

This *Construction Bulletin* describes how the Federal prison system selects and acquires sites for new institutions—a process that may offer suggestions for State and local officials facing this difficult issue.

To minimize time and expense, the Bureau of Prisons first looks for existing facilities that might be acquired and converted to correctional use. If these are not available, development of new institutions from the ground up is the next alternative for adding capacity.

From the Director

The dilemma of too many serious crimes with injured victims and not enough space to incarcerate convicted criminals is a major domestic policy issue. Convicted violent and repeat serious offenders have contributed to swelling prison and jail populations which outstrip capacity in many jurisdictions.

The gravity of the problem is recognized by officials throughout the criminal justice system. In fact, when the National Institute of Justice asked criminal justice officials to name the most serious problem facing the system, police, courts, and corrections officials reached a virtually unanimous consensus: prison and jail crowding is the number one concern.

Attorney General Edwin Meese III has spoken out repeatedly on the dimensions of the crisis and the need to help State and local jurisdictions find less costly ways to increase corrections capacity so convicted serious criminals are prevented from preying on people, communities, and our economy.

Responding to the need, the National Institute of Justice established the *Construction Information Exchange* to help State and local officials make informed decisions on building or expanding facilities.

These *Construction Bulletins* further that initiative by helping States and localities learn about programs that have succeeded in other jurisdictions—ideas and approaches that may work in theirs as well.

This *Construction Bulletin* sets forth the experience of Federal officials who have faced the problem of finding sites for prisons.

The Bureau of Prisons has enjoyed considerable success in achieving community support for what is often an unpopular issue. Of particular note is the donation of land by local officials to encourage the construction of a prison in their communities.

While the Bureau of Prisons does not claim to have all the answers, we feel that this *Construction Bulletin* will offer helpful advice to State and local agencies now searching for places to build jails and prisons.

In addition to these *Bulletins*, the National Institute of Justice has also published a *National Directory of Corrections Construction*, based on the results of a national survey, which provides a wealth of information on construction methods and costs for jails and prisons built since 1978.

The National Institute also maintains, at our National Criminal Justice Reference Service, a computerized data base on corrections construction. Through this *Construction Information Exchange*, those planning to build or expand facilities are put in touch with officials in other jurisdictions who have successfully used more efficient building techniques.

James K. Stewart
Director
National Institute of Justice

New Federal prison at Fairton, New Jersey

Traditionally, the major hurdle in new construction has been site acquisition. Finding a suitable site that a local community was willing to put to institutional use often took several years prior to design and construction. Thus 5 years' lead time might be required to acquire a suitable site and to design, construct, and activate a new prison.

Due to increasing population pressures, the Bureau of Prisons has streamlined its approach to facilities development, and the current approach calls for activation of new prisons within 2 years of the appropriations and funding. This means the Bureau moves through site acquisition, planning, design, and activation in a shorter cycle than ever before.

Selection criteria

What first triggers the acquisition process is identification of sufficient numbers of inmates from a specific locale to justify a new permanent facility in that area. After a general part of the country is designated for site selection, the Bureau advises State Chambers of Commerce, regional economic development associations, and State Departments of Corrections that it is interested in considering potential sites.

The Bureau's comprehensive plan for evaluating potential sites includes such technical criteria as development suitability, hazards avoidance, and availability of special resources. But it also includes such basic factors as these:

- Endorsement by local officials and Members of Congress together with broad local support.
- About 200 to 250 acres with adequate visual buffers along the outer boundaries. A smaller parcel may be acceptable depending on local circumstances, topography, and desirability.
- Location within 50 miles of a large population center (50,000 or more people) to ensure community resources for the facility—housing, potential staff, and goods and services.
- An accredited full-service hospital, recognized and licensed by the State in which it is located, within 1 hour's distance.
- Fire protection services, with a public-service fire company preferred.
- Higher education facilities nearby, with accredited colleges or universities and a wide variety of technical schools.
- Accessibility to public transportation and major highway systems, preferably with commercial ground and air service nearby.
- Adequate or expandable public utilities.

The Bureau places high priority on site selection for prisons in a community setting, unlike the remote areas favored for prison sites in the past. Regardless of the security level planned, new facilities are located at or near a defined community primarily because of the availability of employees and support services.

Public reaction

In the past the Bureau usually initiated contacts with community leaders to explore developing a new facility in the area. But since the Bureau adopted its new, more active approach, aggressive site searches are combined with an information program stressing the significant economic benefits of correctional facilities.

As a result, local officials often solicit the Bureau to have their communities considered. With unemployment high and local economies ailing in many parts of the country, local leaders often see a potential Federal prison as a recession-proof economic base.

Whenever approached, the Bureau of Prisons tries to be responsive to all inquiries and will visit almost any proposed location. Such availability and visibility, the Bureau finds, often brings leads to other possibilities.

One of the most difficult and potentially adverse events in the site selection process is premature disclosure of a proposed project, resulting in negative community reaction. With caution and diplomacy, the Bureau discusses its plans with community leaders as a first step. If their reaction is favorable, an intensive public information effort comes next.

The Bureau works to familiarize the community with the Bureau's operations and the types of facilities it develops. The site acquisition staff from the Bureau's Office of Facilities Development and Operations makes presentations to local business and civic groups to acquaint them with the benefits associated with locating a correctional facility in their area.

Frequently, communities organize a local task force early in the process to mobilize support for the prison proposal. It is not uncommon for opposing groups to organize similarly. This increased community awareness and involvement often leads to controversy.

Thus, maximum discretion is essential in identifying potential sites. Until it is determined that a community is receptive and that sites with the necessary potential are available, untimely publicity may jeopardize the outcome. Sensitive handling of the proposal by a core group of community leaders is critical before proceeding to full public review of a project.

When a public education program *is* launched in a community, it stresses the potential economic benefits. Many fears are allayed by letting community groups tour existing institutions similar to the one proposed for their area, giving them a chance to talk with staff and meet with their community counterparts.

If a preliminary technical feasibility study proves a site unacceptable, the Bureau lets the community know this result. If there are major obstacles to one site, sometimes the community offers alternatives.

Priority considerations

With limited resources, the Bureau's first priority must be cost benefit. The maximum number of beds must be built. Therefore, the Bureau looks first at—

- existing Federal property;
- surplus Federal property;
- existing facilities suitable for low-cost conversion; and finally,
- improved land for new construction.

The Bureau seeks land that would be donated at nominal cost with an acceptable infrastructure (roads, utilities in place or readily available). If infrastructure improvements are required, many times they can be funded from local sources or State grants, allowing more Federal money for actual construction.

For example, in Marianna, Florida, Fairton (Fairfield), New Jersey, and Bradford, Pennsylvania, land was purchased by the community and donated at no Federal cost; State funds are paying for infrastructure improvements.

Federal agencies sometimes acquire needed property through condemnation proceedings. The Bureau of Prisons avoids condemnation, preferring to gain community support, and also tries to abide by local land use and zoning regulations to the greatest extent possible.

Environmental consequences

The National Environmental Policy Act of 1969 governs "major Federal actions" affecting the environment. Since development of new correctional facilities is clearly a "major Federal action," the Bureau of Prisons must analyze all the environmental issues associated with the proposed project.

An Environmental Impact Statement becomes the vehicle for analyzing all the environmental issues and the basis for deciding to proceed or cancel. Until the time-consuming and complicated process of the impact statement is complete, the agency's plans are only "proposals" and no firm decision can be made.

The overwhelming environmental concern is a new prison's effect on the quality of life in the host community. Environmental issues must be properly monitored and presented for public review in an easily understood format. Most communities want to know whether a new Federal prison will—

Jeopardize our town's safety and security?

Adversely affect property and housing values near the prison?

Adversely affect city schools and other community services?

Burden local law enforcement agencies?

Consume all our water supply and sewage capacity?

Intrude visually on neighboring properties?

Give our town the reputation of "a prison town"?

On the positive side, more than a few citizens have another important question: "How can I get a job?"

No environmental issue or public concern can be overlooked or underestimated if officials are to gain cooperation and acceptance by the community. This must be a primary objective of the site acquisition effort.

Because expansion by the Federal Bureau of Prisons into communities throughout the country will result in many local changes, the Bureau strives to be responsive to community concerns at this planning phase. The Bureau of Prisons considers community acceptance and support essential to an institution's effectiveness and success in meeting its goals.

About the author . . .

Wade B. Houk has been Assistant Director for Administration, Federal Bureau of Prisons, since 1982. His division's responsibilities include facilities development and operations, budget development, and financial management as well as information systems.

Construction Bulletins are part of the research conducted under "New Directions in Construction and Finance of Correctional Institutions," a National Institute of Justice project directed by Charles B. DeWitt, an Institute research fellow. Comments and suggestions about the *Bulletins* may be sent to Mr. DeWitt at the National Institute of Justice, 633 Indiana Avenue NW., Washington DC 20531.

The new Federal prison at Marianna, Florida, built on land donated to the Bureau of Prisons

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U.S. Department of Justice
Bureau of Justice Statistics

Our Crowded Jails: A National Plight

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June 1988

Introduction

"What do you feel is the most pressing problem confronting your State's criminal justice system today?"

This question was asked of 2,400 criminal justice administrators across the country in a survey released by the National Institute of Justice (NIJ) in 1984. Jail and prison crowding was identified as the most pressing issue facing criminal justice institutions by 32% of the respondents, including--

- attorneys general
- district attorneys
- judges
- police chiefs
- heads of criminal justice agencies
- corrections officials.

Police officials identified jail and prison crowding twice as often as any other problem, and prosecutors identified it three times as often.[1] Academic research and national media coverage have focused much attention on crowding in State prisons, but less attention has been given to the plight of our Nation's local jails; yet inadequate jail space is also a serious national problem.

In 1986 an estimated 8 million persons were admitted to jails. While the nationwide jail population increased by more than 73% between 1978 and 1986, the rated capacity of jails increased 16%.

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[1] Stephen Gettinger, "Assessing Criminal Justice Needs," National Institute of Justice, Research in Brief, June 1984.

On average, in 1986 jails were operating at 96% of capacity, and those jails with an average daily population of 100 inmates or more reported operating at 108% of capacity—18% over the capacity recommended by the American Correctional Association.[2]

- Three-fourths of the U.S. jail population are held in such jurisdictions.
- 23% of the jails in these jurisdictions were under court order to reduce their inmate populations.
- 27% were under court order to improve one or more conditions of confinement (of this group, 86% were cited for crowded living units, 51% for inadequate recreational facilities, and 41% for deficient medical facilities and services).

Jails vs. prisons

Many news stories about crowding in individual jails have surfaced throughout the country, but the public seems to be unaware of the nationwide implications. Less attention has been given to jail crowding partly because the terms "jail" and "prison" tend to be synonymous to the general public. Yet, they are two very different types of institutions. Among the basic differences in their overall missions and functions are—

- the types of inmates they house
- their locations
- their physical size
- their inmate housing capacities.

Most jails are administered by local governments and hold both convicted and unconvicted individuals. Convicted offenders (about 47% of the jail population in 1986) serve relatively short sentences in jail, usually less than 1 year. Unconvicted persons are detained while awaiting trial or other court proceedings. Jails tend to be located within the community near trial courts and characteristically have few rehabilitation programs.

In contrast, prisons exist primarily as a sanction for criminal offenses, and they are operated by State and Federal governments. The same authority administers both prisons and jails in six States (Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont) and the District of Columbia.[3] Most State governments, however, do not administer jails.

Prisons hold convicted offenders sentenced to terms of confinement for generally more than 1 year. In 1986, 4% of the Nation's prison population were unconvicted or serving sentences of less than 1 year. Prisons also tend to be located away from dense populations and are usually larger than jails.

Both prisons and jails need to reserve some confinement units for specific purposes, such as providing medical services, separating certain inmates from the general inmate population, and replacing units that are under repair. However, fluctuations in populations are greater in jails than in prisons; thus, jails have a greater need for reserve space. This is because of the shorter periods of incarceration in jails, the variation between weekend and weekday population levels, and arrest sweeps by law enforcement officers. In addition, pretrial detainees (53% of the jail population in 1986) present a special problem for jail administrators because such persons have not been convicted of the crime for which they are being held.[5]

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[2] The 1983 Jail Census, Bureau of Justice Statistics Bulletin, NCJ-95536, November 1984; Jail Inmates 1986, Bureau of Justice Statistics Bulletin, NCJ-107123, October 1987.

[3] Report to the Nation on Crime and Justice: Second Edition, Bureau of Justice Statistics, NCJ-105506, March 1988, p. 106.

[4] Prisoners in 1986, Bureau of Justice Statistics Bulletin, NCJ-104864, May 1987.

According to a U.S. District Court decision--

> As a matter of common sense and fundamental fairness, the criminal justice system must insure that pretrial detainees are not housed in more deprived circumstances than those accorded to convicted persons.
>
> Overcrowding in a local jail cannot be quantitatively equated with overcrowding in a state penal institution.[6]

The impact of the courts on managing jails

Jail crowding magnifies the problems of managing and operating a jail. Prisoner and staff tensions increase along with wear and tear on the facility. Budgetary problems stem from the growing need for overtime staffing, and there occasionally exists an inability to meet standards for inmate programs and services (such as treatment programs and food and medical services).

In the past decade courts have become more active in determining the conditions of confinement in jails and prisons. During the 1970's, the courts faced a proliferation of cases dealing with the constitutionality of--

- double-bunking
- operating a correctional facility beyond its rated capacity
- whether the Constitution mandates a minimum amount of physical space per inmate.

The courts have often found conditions of confinement unconstitutional and have required government officials to take remedial--and often expensive--courses of action.

In two landmark decisions, Bell v. Wolfish (1979) and Rhodes v. Chapman (1981), the U.S. Supreme Court abruptly deviated from the interventionist approach of the lower courts. In both cases, the Supreme Court overturned Federal District Court findings of unconstitutional confinement conditions. Both cases held that executive and legislative officials must have discretion in the administration of prisons and jails.

- In Wolfish, the Court concluded that there is ". . . no 'one man, one cell' principle lurking in the Due Process Clause of the Fifth Amendment."[7]
- In Chapman, the Court found that the conditions at Southern Ohio Correctional Facility did not constitute cruel and unusual punishment, ". . . for there is no evidence that double-celling under these circumstances either inflicts unnecessary or wanton pain or is grossly disproportionate to the severity of the crimes warranting imprisonment."[8]

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[5] Jail Inmates 1986.

[6] Green v. Tazewell County Jail, 532 F. Supp. 413, 419 (1982).

[7] Bell v. Wolfish, 441 U.S. 520, 542 (1979).

[8] Rhodes v. Chapman, 452 U.S. 337, 348 (1981).

Despite these decisions, many lower courts continue to find existing conditions of confinement to be unconstitutional. As one commentator has noted--

> A careful reading of Wolfish and Chapman would suggest to such officials that they can constitutionally operate penal institutions with populations greater than the institutional design capacity so long as they continue to meet adequately the inmates' basic necessities of life. However, the lower court decisions since Wolfish and Chapman suggest that at least some courts are still appalled by the conditions of confinement brought to their attention and are disposed to distinguish or even ignore those decisions. As a result, the likelihood of a lawsuit still must be considered substantial and the court's resolution of the dispute cannot be predicted with confidence.[9]

The courts are requiring many jail administrators to meet population ceilings--even though the administrators lack the resources or political support to do so. For example, to comply with a State Superior Court order to alleviate jail crowding and improve detention facilities, officials in Marin County, California, sought a $10 million bond issue to build a 225-bed facility that would have doubled the county's housing capacity. The voters of Marin County rejected the bond issue on June 2, 1987. This is forcing county officials to seek other ways to meet the court's order.[10]

In southern Florida, Dade County's correctional facilities had an influx of Cubans from the Mariel boatlift in 1980. In less than 1 year the county found itself in contempt of a Federal court order to reduce inmate population. It was required to pay a fine of $1,000 per day if it could not reach the court-ordered limit within 60 days. Through an agreement with the Federal Government the county reduced its jail population to the court-ordered limit by the 60th day. However, the very next day its jail population exceeded the limit and continued to do so for the next 4 years.[11]

Local jails and Federal inmates

Jail crowding adversely affects the functioning of the entire criminal justice system. Judges, prosecutors, probation and parole officers, and other officials often must detain offenders for public safety, but jail space is unavailable. Jail crowding also impairs Federal and local court functions when it interferes with the transfer of inmates to and from scheduled court appearances.[12]

Because of jail crowding, the U.S. Marshals Service (USMS), in particular, is facing critical problems in finding housing for Federal pretrial detainees. Traditionally, the Federal Government has relied upon State and local governments to house Federal offenders awaiting legal disposition and material witnesses in Federal prosecutions. In fiscal 1987, 69% of the 85,348 prisoners in USMS custody were housed in State and local jails through 825 intergovernmental agreements between the USMS and State and local governments.

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[9] Jack E. Call, "Recent Case Law on Overcrowded Conditions of Confinement," Federal Probation, September 1983, p. 33.

[10] "Marin Voters To New Jail--Not," The Pretrial Reporter, vol. XI, no. 3 (June 1987), p. 5.

[11] The Pentacle, U.S. Marshals Service, vol. 7, no. 1 (January 1987), p. 17.

[12] Andy Hall, "Systemwide Strategy To Alleviate Jail Crowding," National Institute of Justice, Research in Brief, January 1987.

Nevertheless, the USMS has continually encountered problems in obtaining adequate detention space. From 1980 to 1987, the number of jails that severely restricted or terminated space for Federal prisoners increased by 198% (from 90 to 268). These restrictions resulted from--
- severe crowding
- an ever-increasing amount of prisoner litigation
- court orders concerning substandard conditions of confinement.

Thirty percent of the 94 Federal judicial districts currently face critical shortages of detention space. This has spurred significant growth in the number of unsentenced Federal prisoners detained in already overcrowded Federal institutions or in jails in outlying rural areas.[13]

Detaining Federal prisoners in outlying rural jails is problematic because such jails are small, and the detainees must be divided among several jails, often in diverse directions and at greater distances from the court. More Deputy U.S. Marshals and equipment are needed to transport prisoners to and from multiple locations, which incurs higher costs and greater risks. For example, during a single month in fiscal 1986, one district used 22 different jails to house its prisoners. This resulted from an abrogation of a detention agreement with a major facility. Termination of the agreement was caused by jail crowding.[14]

The USMS needs short-term detention space near Federal court cities.[15] This is also very important to probation and pretrial officers, defense and prosecuting attorneys, and case agents who need access to pretrial detainees during court proceedings.

The Bureau of Prisons (BOP) provides detention space for 31% of Federal pretrial detainees; however, the 26 BOP facilities used by the USMS are 64% over their rated capacities. New BOP facilities are being built, but they are of little help to the USMS because of their remote locations from Federal trial courts.

As available jail space continues to decrease, the number of Federal prisoners continues to grow. The daily average number of prisoners in USMS custody rose 35% from fiscal 1984 to 1987. The average length of prisoner detention in contract facilities increased 17% over the same 3-year period.[16]

The crowding of Federal detainees is particularly critical in such areas as the Northern District of California. On a typical Friday evening the USMS may have as many as 12 prisoners because of late afternoon arrests, with no space to house them. Local jails have exceeded their capacity and will not accept more prisoners. Prisoners may have to be transported 480 miles round-trip for detention over the weekend.

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[13] The Director's Report: A Review of the U.S. Marshals Service in FY 1987 (U.S. Marshals Service, Resource Analysis Division, 1987) and unpublished data from the U.S. Marshals Service. See also, The Pentacle, p. 3, and Report on the Jail Crisis, prepared for the Honorable Dale Bumpers, Committee on Appropriations, U.S. Senate (U.S. Marshals Service, 1987), p. 4.

[14] The Director's Report.

[15] U.S. Marshals Service, unpublished data.

[16] U.S. Marshals Service, unpublished data.

To compound the problem, the county jail in San Francisco is under court order to reduce its population. The county sheriff has been forced to reduce the number of Federal prisoners housed in the San Francisco facility from 60 to 30, and by December 1987 more than 60 prisoners from San Francisco were being housed in Los Angeles. This action seriously impedes the USMS' ability to operate effectively in that judicial district.[17]

Jail crowding and public safety

Jail crowding also adversely affects the community at large. Many jail administrators are using early and emergency release of offenders to cope with the crowding and comply with court-ordered reductions. Early release of offenders solely because of the shortage of space calls into question the integrity of the administration of justice and could pose a threat to public safety.

In 1985, 19 States reported nearly 19,000 early prison releases.[18] The Cook County Jail in Illinois alone released 1,200 low-bail defendants between November and December 1986 to avoid violating a Federal court order limiting its inmate population.[19]

Why has jail crowding become a nationwide problem? In the 1960's, crime rates skyrocketed while the prison population declined. In the 1970's, however, public opinion shifted to a tougher attitude toward criminal offenders. The incarceration rate--

- increased dramatically by 39% from 1970 to 1979, constituting the largest increase within a decade since the 1920's
- climbed 36% from 1980 to 1985, indicating that this decade may experience the highest increase on record.

These statistics represent populations of prisons rather than jails, but they are indicative of the increased use of incarceration for dealing with serious offenders.[20]

The growth in prison populations in recent years directly affects local jail population because local jails often house inmates who cannot be transferred to overcrowded State prisons. In 1986, 26% of jails in jurisdictions with large inmate populations (100 inmates or more) held additional inmates due to crowding in State or Federal prisons or in other jails. More recently, at yearend 1985, 18 States reported a total of more than 10,000 State-sentenced inmates held in local jails due to prison crowding.[21]

Deinstitutionalization of the mentally ill in recent years and the lack of community-based support to care for them has contributed to jail crowding. Many mentally ill patients were left to the streets with a high probability of becoming local jail inhabitants. A study funded by the National Institute of Corrections estimates that 6% of the population in State prisons is classified as mentally ill.[22]

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[17] The Pentacle, pp. 7-8.

[18] Report to the Nation on Crime and Justice, 2nd ed., p. 109.

[19] "John Howard Pushes Reform in Cook County," The Pretrial Reporter, vol. XI, no. 2 (April 1987), p. 5.

[20] The Prevalence of Imprisonment, Bureau of Justice Statistics Special Report, NCJ-93657, July 1985.

[21] Jail Inmates 1986; Report to the Nation, 2nd ed.

[22] Sourcebook on the Mentally Disordered Prisoner, New York State Department of Corrections, National Institute of Corrections, March 1985, p. 15.

Data on the percentage of jail inmates who are mentally ill are vague and inconclusive, and the numbers vary widely. It is estimated, however, that the percentage of mentally ill inmates in jails is higher than the estimated 6% in prisons. In addition to housing mentally ill offenders who have committed crimes, jails often house mentally ill individuals who have been removed from the streets to protect them from themselves and others until they can be referred to a treatment program.

The public and jail construction

Despite public sentiment in favor of incarceration, jails are not often given a high priority in the outlay of tax dollars, nor are they a popular political issue. The field of corrections lacks a political constituency and is often portrayed as draining scarce resources from more popular government programs. Recognizing this, the National Conference on Correctional Policy in June 1986 ranked educating the public about community corrections to be one of the top priorities for judges and lawmakers.[23]

Even when funds are allocated to jail construction, many citizens are reluctant to have jails built in their communities. In response to the critical shortage of jail beds in their county, the voters of Dade County, Florida, approved a $200 million bond issue for criminal justice facilities. Numerous sites were considered, but each site raised controversy among citizens who did not want jails in their communities.

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[23] The National Conference on Correctional Policy held in June of 1986 in Washington, D.C., was sponsored by the American Correctional Association, the National Institute of Corrections, and the National Institute of Justice; Bobbie L. Huskey, "Public Relations Beyond Marketing," Corrections Today, February 1987, p. 48.

To mitigate opposition, the county decided to build the new jails on sites where correctional facilities already existed; however, the opposition would not subside. Community residents adjacent to the facilities have filed a lawsuit to block the construction.[24]

Effects of Federal legislation on jails

Various new Federal laws have been passed that will profoundly affect the size of inmate populations. These laws prescribe mandatory sentences and increased sentence lengths for specified offenders. These laws include the--

- Anti-Drug Abuse Act of 1986
- Comprehensive Crime Control Act of 1984 (CCCA), in which Congress abolished parole for Federal offenders and required the U.S. Sentencing Commission to develop new guidelines for sentencing Federal offenders. The guidelines were implemented on November 1, 1987.

A Supplementary Report on the Initial Sentencing Guidelines and Policy Statements was issued in June 1987. In the report the Sentencing Commission estimated that the Anti-Drug Abuse Act, along with the new sentencing guidelines and the career-offender provision of the CCCA, will cause the Federal prison population to--

- be 26% higher in 1992 and 50% higher in 1997 than it would have been without the new laws
- more than double in the next decade, from 42,000 in 1987 to 92,000 in 1997.[25]

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[24] The Pentacle, p. 17.

[25] Supplementary Report on the Initial Sentencing Guidelines and Policy Statements, U.S. Sentencing Commission, June 1987, pp. 63 and 71.

The burgeoning Federal prison population affects jail conditions because jails are sometimes used to house the overflow of prison inmates. In addition, the number of arrests will increase as a result of the Anti-Drug Abuse Act. This translates into more offenders being processed through the system and detained in jails while awaiting trial. The USMS Detention Study projects that its average daily Federal prisoner population will increase by 108% between fiscal 1986 and 1992.[26]

The CCCA of 1984 also includes the Bail Reform Act, which enables judicial officers to hold Federal suspects in preventive detention before trial if they are considered a threat to the public. In the recent Supreme Court decision, U.S. v. Salerno (1987), the Court upheld the constitutionality of this provision.[27] According to the Administrative Office of the U.S. Courts--

- Federal judges reported a total of 9,440 hearings on requests for preventive detention between July 1, 1985, and June 30, 1986.
- Since the Bail Reform Act was passed, the number of Federal pretrial detainees has increased by 36%, from a daily average of 5,383 in 1984 to 7,378 in 1986.

In addition, as of 1984 an estimated 32 States plus the District of Columbia permit judges to use the criterion of danger to the community when considering bail or other pretrial release options.[28]

New laws pertaining to offenses such as drunk driving have proliferated and will also affect jail inmate populations. By May 1985 more than 30 States had enacted laws that designate drunk driving as a criminal offense subject to severe penalties, such as mandatory confinement. Sentences for driving while intoxicated are frequently served in jails.[29]

Delays in processing cases through State and local courts also have contributed to jail crowding because jails often detain defendants awaiting court proceedings. Many counties throughout the Nation, however, are taking steps to expedite cases through the system to increase efficiency and reduce the number of individuals unduly detained in jail.

Fairfax County, Virginia, for example, has instituted a number of procedures to expedite its handling of its steadily increasing caseload (the heaviest in Virginia) resulting from surges in the county's population. The court, which handles 15,000 cases a year, disposes of felony cases in 8-12 weeks; this is below the 6- to 8-month time period in other large jurisdictions.[30] Key aspects of the Fairfax program are--

- automation of case-processing data
- timely scheduling of trial dates
- expeditious jury selection
- a cooperative effort among judges and between attorneys and judges to minimize case-processing delays.

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[26] U.S. Marshals Service FY 1987 to 1992 Detention Study, U.S. Marshals Service.

[27] U.S. v. Salerno, 107 S. Ct. 2095 (1987).

[28] "Court Upholds Preventive Detention," Washington Post, May 27, 1987; The Director's Report, p. 14; Report to the Nation, 2nd ed., p. 77.

[29] Jailing Drunk Drivers: Impact on the Criminal Justice System, National Institute of Justice, Executive Summary, May 1985, p. 1.

[30] "Case Jam Causes Jail Jam," The Pretrial Reporter, vol. XI, no. 2 (April 1987), p. 4; "Fairfax Reduces Delay, Confirms National Findings," The Pretrial Reporter, vol. X, no. 2 (April 1986), p. 5.

Conclusion

It is evident that jail crowding is a pervasive problem nationwide, having an impact at all levels of government. The causes of this problem are multiple and the ramifications, serious. To combat jail crowding, criminal justice professionals and public officials have begun to foster relationships to better share information and technical expertise and to meet the unique conditions of their communities. The scope and magnitude of the problem, however, points to the need for Federal and State as well as local efforts to find real and lasting solutions.

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National Institute of Justice

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Systemwide Strategies To Alleviate Jail Crowding

Andy Hall

The words "jail" and "crowding" seem inseparable these days. A 1983 National Institute of Justice survey of more than 1,400 criminal justice officials from all parts of the country identified jail and prison crowding as the most serious problem facing criminal justice systems.[1]

The reality of more prisoners than available beds creates a dilemma for local justice officials. Crowded jails may compromise public safety through a lack of space to confine those who pose serious threats to the community. Lawsuits challenging crowded conditions may constrain a community's ability to incarcerate.

A recent Bureau of Justice Statistics *Bulletin* notes that 22 percent (134) of the Nation's 621 largest jails (those with a capacity of more than 100) were under court order in 1984 to expand capacity or reduce the number of inmates housed, and 24 percent (150) were under court order to improve one or more conditions of confinement.[2]

From the Director

Communities throughout the Nation face the problem of jail crowding: Having more prisoners than space to house them. Despite construction innovations that may help cities or counties expand their confinement capacity both more quickly and at less expense, a host of problems, including fiscal pressures sometimes, may indicate solutions other than construction.

Some consequences of jail crowding are well known: Increased victimization and fear, decreased public confidence that dangerous persons can be locked up, lawsuits, court-imposed limits on the number of prisoners, damage to facilities and equipment. Crowding increases both tension in the institution and the strain on correctional budgets.

Less obvious but equally worrisome are delays in case processing due to cumbersome access to prisoners and the limits put on such necessary judicial options as pretrial release and sentencing.

National Institute of Justice surveys have shown that officials in law enforcement, courts, corrections, and other parts of the justice system were virtually unanimous in naming prison and jail crowding their number one concern.

Recognition of the gravity of jail crowding, however, offers a glimmer of hope. Officials in a growing number of jurisdictions have concluded that if each part of the local justice system does what it can to ease crowding, the sum of all these small solutions has a notable cumulative effect.

The separate decisions of law enforcement, judicial prosecution, defense, pretrial services, probation, corrections, and other officials can interact to influence the number of jail admissions and length of confinement. Jurisdictions taking this systemwide approach find that seemingly minor modifications in case processing can both reduce crowding and, more important, improve the overall administration of justice.

Jail crowding is a local problem that must be dealt with locally. The National Institute of Justice hopes to contribute to such endeavors, however, by assessing and synthesizing information on the program and process changes that local jurisdictions may want to consider. Without information on the experience of other jurisdictions, informed policy decisions are hard to come by.

At the Institute, our role is one articulated by President Reagan and Attorney General Meese: To support, not to direct, local responsibilities. Experience demonstrates that we have many useful tools to deal with jail crowding. This *Research in Brief* offers local jurisdictions their choice among such options.

James K. Stewart
Director
National Institute of Justice

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Building or expanding facilities is often necessary to house those who must be incarcerated. The time and costs of construction and operation of new institutions, however, argue that other options should not be overlooked.[3]

For the local sheriff or jail administrator, jail crowding creates increased prisoner and staff tensions, increased wear and tear of facility and equipment, budgetary problems from overtime staffing, and an inability to meet program and service standards. Less frequently recognized are the problems crowding creates for other justice system officials:

- Judges, prosecutors, probation and parole, and other officials often find crowding a severe constraint in cases where jailing offenders appears necessary but space is unavailable.
- Prosecutors, public defenders, and pretrial services officers find their functions impaired by delayed access to inmates caused by difficulty in processing large numbers of offenders.
- Court functions overall may suffer when crowding affects the movement of inmates to and from scheduled appearances.

Too often, however, agencies outside jail management are not fully involved in efforts to cope with the problem.

Many jurisdictions address the symptoms of jail crowding but leave the underlying causes unaddressed. Other jurisdictions, however, view jail crowding as a problem that demands the cooperative involvement of all key figures in the local justice system.

Given the success of this *systemwide* approach in a number of locations, the National Institute of Justice sponsored development of *Alleviating Jail Crowding: A Systems Perspective* (NCJ 99462, 1985), based on a survey of justice system officials and programs throughout the United States. The report stresses that while construction of new facilities may be part of a community's solution to crowding, emphasis must also be placed on ensuring that existing bed space is used effectively. Accordingly, the report highlights the role of each local criminal justice agency in ensuring the effective use of jail bed space to prevent crime and maintain public safety. This *Research in Brief* summarizes the full report.

Looking at the local justice system

Virtually every decisionmaker in the local justice system exercises discretion that can affect the jail population. Jurisdictions using a systemwide approach to jail crowding see the local justice system as a screening mechanism that can be modified to enhance the use of scarce jail space.

These jurisdictions develop case-processing flowcharts to understand the details of their case-handling process from the initial contact to final disposition. Flowcharts illustrate the stages of the legal process, specify the points at which decisionmaker actions affect the jail population, and identify opportunities to alleviate crowding.

Understanding the local flow of cases can help policymakers identify program and process changes to reduce crowding. Program changes frequently involve eliminating the jailing of persons whom a community deems inappropriate for criminal justice processing, such as the mentally ill.

Process changes improve system efficiency, eliminating case-handling "catch points" that unnecessarily prolong the confinement of persons who might eventually be released through bail, probation, or transfer to the State prison.

Reducing length of confinement often becomes the first focus of population reduction, because efficiency measures are generally less costly and more readily implemented than new programs. Local analysis often reveals that the primary underlying cause of crowding is excessive length of confinement due to inefficient case processing.

How system decisionmakers can affect jail crowding

System studies in a number of jurisdictions have suggested, as one judge said, "a lot of little ways" to halt or reverse jail population increases - without releasing serious offenders. The following discussion highlights just a few of the "little ways" available at different parts of the system.

Law enforcement—Decisions surrounding local arrest practices—whether to arrest, transport to jail or stationhouse, book or detain for bail setting—are critical determinants of jail population size. Law enforcement practices both before and after arrest can be modified to reduce jail admissions. Jurisdictions such as San Diego County, California, and Frederick County (Winchester), Virginia, use perhaps the most common form of prearrest diversion through short-term "sobering up" facilities for public inebriates.

San Diego has been successful in reducing crowding through the use of a privately operated detoxification reception program where inebriates must remain for a minimum 4-hour period. Though in a largely rural area, the Winchester, Virginia, detoxification program, operated by the Division of Court Services, has also diverted a large number of persons from jail.

Similar prearrest diversion programs are in effect for persons involved in family disputes[4] and for homeless persons in a number of jurisdictions throughout the United States.

Law enforcement officials in Galveston County, Texas, have instituted practices to divert the mentally ill—a population that frequently makes up 10 to 20 percent of a jail's population. A team of deputies receives special training to assist in meeting the emergency needs of the mentally ill, thereby allowing the agency to take them directly to a mental health facility.

Many agencies also use a number of postarrest practices such as stationhouse release before booking, field citations, and court-delegated authority to release suspects according to a bail schedule to eliminate unnecessary confinement.

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Jail administrators—Elected sheriffs or appointed jail executives are often viewed as the managers most affected but least powerful in dealing with jail crowding. While having little direct control over admissions and length of confinement, jail administrators nevertheless can help reduce crowding by assuring ready access for pretrial release screening and bail review.

Quick access to detainees tends to be a common characteristic of successful programs to reduce jail crowding. For example, the sheriff in Mecklenburg County (Charlotte), North Carolina, allows pretrial services staff to be present during the jail admissions process, which gives them access to defendants and speeds decisionmaking.

Individual judges often lack feedback regarding prisoners in jail awaiting or following adjudication. Yet such information is of interest to the court and critical to jail population reduction. The Bexar County (San Antonio), Texas, administrator provides data to help judges monitor the court status of prisoners and prevent length of confinement from being extended through oversight or inattention.

In some other jurisdictions, jail administrators are delegated authority to release defendants pretrial or divert drunk drivers to treatment centers. Other administrators help develop nonjail pretrial-release and sentencing options or cooperate with other jurisdictions to alleviate crowding on a multicounty basis.

Prosecutors—Prosecutors act at more case-handling decision points than any other officials. This gives them an especially important role in containing jail population growth.

Early case screening by prosecutors reduces unnecessary length of confinement by eliminating or downgrading weak cases as soon as possible. Assistant prosecutors in Milwaukee County, Wisconsin, review arrests around the clock by examining police records and conducting meetings between complainants and suspects. This practice enables Milwaukee prosecutors to decide on the appropriate charge within 24 to 36 hours after arrest.

Prosecutors in Milwaukee also use "vertical case processing"—assigning the same attorney or team of attorneys to prosecute a case from start to finish. Though not necessarily the case in all jurisdictions, reassigning cases from one assistant prosecutor to another while the matter is before the court—"horizontal case processing"—may cause stagnation in caseflow, increased requests for continuances, and lengthened time to trial.

Prosecutor cooperation is essential for alternatives in arrest, pretrial confinement, and sentencing. Prosecutor participation and leadership are essential to the effectiveness of task forces dealing with jail crowding. Since the prosecutor "owns" cases on behalf of the State, others are rarely willing to propose case-handling changes without the prosecutor's support.

Recognizing that a lack of space to confine dangerous persons is a threat to public safety, prosecutors in a number of jurisdictions have taken an active role in reducing jail crowding by serving on "key court officials" groups or chairing jail population reduction boards.

Pretrial services—Providing background information on defendants, release recommendations, and other pretrial assistance can be an important component of solutions to crowding. Pretrial services can often help merely by adjusting staff schedules to ensure timely screening and interviews for a maximum number of defendants.

In Mecklenburg County, North Carolina, for example, pretrial services and magistrate bail setting are available 24 hours, 7 days a week. In Kentucky, pretrial staff are on call 24 hours a day to interview persons arrested, notify judges by phone of the prisoner's qualifications for release, and supervise the release process if nonfinancial bail is authorized.

Limited release authority is delegated to pretrial services staff in an increasing number of jurisdictions. In San Mateo County (Redwood City), California, pretrial staff are authorized to release misdemeanor suspects prior to their first court appearance. Seattle, Washington, is experimenting with delegated release on certain felony charges.

Many pretrial programs respond to jail population pressures by expanding the range of release options (conditional and supervised release, third-party custody, unsecured bail, deposit bail) and by conducting regular bail reviews for those detained for trial.

A National Institute of Justice study found that supervised release programs in Miami, Florida, Portland, Oregon; and Milwaukee, Wisconsin, significantly reduced the bail-held population without significantly increasing the risk to public safety.[5]

Judiciary—Judges make more decisions affecting jail population than anyone else; this often makes them leaders in seeking jail-crowding solutions. Judges can issue summonses instead of arrest warrants; provide guidelines authorizing direct release by police, jail, and pretrial staff; and provide bail setting outside normal court hours. Evaluators of the 4-year Jail Overcrowding Reduction Project of the former Law Enforcement Assistance Administration found that the project's most successful sites were those with strong judicial leadership.

Many courts provide 24-hour bail-setting magistrates. The King County (Seattle), Washington, District Court has a "three-tier" release policy that reduces court time, jail admissions, and length of confinement. The court-established guidelines specify the charges for which pretrial services staff may (1) release without consulting the court, (2) release after phoning a duty judge, or (3) make recommendations to the court in the most serious felony cases.

Reducing court delay is crucial to effective use of jail space. Bexar County, Texas, seeks to eliminate "dead time" by having the court administrator work with a jail case coordinator to identify cases in need of special attention and processing steps that can be shortened. Each judge receives weekly a list of prisoners awaiting indictment, trial, sentencing, or revocation in his or her court.

One result is a 50-percent time saving in disposing of misdemeanor charges and thus a significant cut in overall length of confinement.

Many judges have worked to extend the range of nonjail sentencing options, using probation supervision, suspended sentences, fines, community service and restitution, halfway house placements, and specialized treatment facilities as true alternatives to incarceration.

A growing number of courts now defer service of jail sentences, when the jail is at capacity, in cases in which jail is believed an appropriate sentence but immediate jailing is not essential for the community's safety.

Defense—The National Institute's field test on Early Representation by Defense Counsel found that early screening for indigency, defender appointment, and defendant contact can decrease length of confinement and thus yield substantial savings of jail space.[6] Vertical case processing in defense offices also helps cut length of confinement.

In Mecklenburg County, pretrial conferences between defense and prosecution help identify, eliminate, or downgrade marginal cases and facilitate plea negotiation. Both offices can thus budget staff time efficiently and lessen pretrial confinement.

In St. Louis, Missouri, efforts to reduce staggering defender caseloads by appointing private attorneys in felony cases have also reduced case disposition time, stimulated bail review, and resulted in shorter pretrial confinement.

Probation and parole—Not only do probation and parole agencies provide nonjail alternatives for sentencing, they can enhance case-processing efficiency by streamlining presentence investigation (PSI) procedures and expediting revocation decisions. All this helps cut length of confinement.

In Brevard County, Florida, the jail population oversight committee spotlighted PSI delays and worked with probation and parole officers to cut PSI preparation time from 90 days to 30 or 35 days for jail cases. The county also cut to 24 hours the time required for decisions on probation revocation, thus decreasing the use of jail beds for persons on probation "hold" orders.

Outside the local level—State legislation, court rules, executive orders, and other "external factors" can affect jail populations. Guidelines on diversion, bail policy, appointment of legal counsel, sentencing practices, and jail operation all can affect the range of solutions available.

Other outside factors that need to be considered in local planning for jail use include local demographics, availability of State and Federal resources, public opinion and media coverage of criminal justice issues, activities of local civic groups and community organizations, and political campaigns and referendums.

Outside the system—Organizations outside the justice system can be instrumental in alleviating shortages of jail space by providing emergency shelter, detoxification, and treatment facilities for the mentally disturbed, public inebriates, and drunk drivers. Many jurisdictions use local mental health centers to provide prompt mental health assessments, diversion, and outpatient treatment. Private agencies in several jurisdictions provide temporary shelter for juveniles, pretrial supervision, and community-service placements.

Formulating solutions

While individual parts of the system can help through such practices as those highlighted above, one or two agencies in the local justice system are not enough to bring about comprehensive solutions to crowding. Jail crowding results from the actions of many, with their decisions interacting to determine jail admissions and length of confinement. Effectively combating crowding requires taking into account the interactive nature of the problem.

Jurisdictions that successfully implemented a systemwide approach to jail crowding have identified as critical needs (1) the participation of key decisionmakers in formulating solutions and (2) detailed information on case processing and on the actual characteristics of the jail population.

Key decisionmaker participation—Whether it is a "jail population management board" or some other body, experience in many jurisdictions argues for a forum that encourages communication and participation by judges, prosecutors, sheriffs, police, probation officials, and other policymakers in developing solutions to crowding.

Collective involvement provides increased awareness of the impact of one agency's actions on another and of the other agency's procedures. Also, recommendations of a broadly constituted planning group are more likely to gain systemwide support. Finally, the political pragmatism that may accompany committee action may permit some participants to support more imaginative policies.

Information—A systemwide approach to jail crowding requires improved information about jail use. In addition to the detailed flowcharts that help assess the timeliness of case-processing decisions and the availability of nonjail options, planners need information on precisely who or what type of person is in jail and why and how long they stay. This permits administrators to learn the frequency of admissions and the size and variation of distinct segments of the jail population, as well as indicating sluggish case processing.

Statistical analysis of the population identifies symptoms of jail crowding, greatly enhancing the ability to identify and treat the causes. But while jail population data are valuable, they should not overshadow case-processing information.

Analysis of data on the jail population might show, for example, that persons detained before trial are released only after 7 to 10 days. Alone, this finding could indicate the need for a special pretrial services program to expedite screening and bail review. Information on caseflow, however, might reveal the actual cause to be inefficient case processing.

Evaluation information is also critical to developing effective strategies. Evaluation data should be collected and analyzed to determine if planned modifications in decisionmaking are being made and the resulting positive or negative implications for crowding and public safety.

Implementing strategies and conclusions

Localities that take a systemwide approach to jail crowding generally follow some important steps:

Involve all key system decisionmakers;

Collect all necessary data on jail population and case processing;

Identify, implement, and evaluate appropriate changes in programs or processes; and

Inform the public of system changes when initiated and successful strategies when confirmed.

While many communities have taken great steps, experience has also confirmed the complexity of the jail crowding problem and the futility of seeking a panacea through one or two changes. Long-term success requires a variety of solutions and, most important, the time, patience, and attention of the entire criminal justice community.

Andy Hall is an associate of the Pre-Trial Services Resource Center, Washington, D.C., and principal author of the NIJ publications Alleviating Jail Crowding: A Systems Perspective *and* Pretrial Release Program Options *(NCJ 94612).*

Notes

1 Stephen Gettinger, "Assessing Criminal Justice Needs," National Institute of Justice *Research in Brief*, June 1984, NCJ 94072.

2 *Jail Inmates 1984*.

3 Those jurisdictions that must build or expand jails can learn from the experiences of others through the National Institute of Justice Corrections Construction Initiative. For information, call 800–851–3420 or 301–251–5500 and ask to speak with a corrections specialist.

4 In violent family disputes, however, research now indicates that arrest is the preferred police response. This research, now being replicated under NIJ sponsorship, was reported in Lawrence W. Sherman and Richard A. Berk, *Minneapolis Domestic Violence Experiment*, Washington, D.C., Police Foundation, 1984, NCJ 98905.

5 James Austin, Barry Krisberg, and Paul Litsky, *Evaluation of the Field Test of Supervised Release—Final Report*, 1984, NCJ 95220.

6 An executive summary of the *Early Representation by Defense Counsel* evaluation, by E. J. Fazio, Jr., et al., is available in microfiche as NCJ 97595.

RESOLVED:
THAT THE FEDERAL GOVERNMENT SHOULD ENACT A NATIONWIDE POLICY TO DECREASE VIOLENCE IN PRISONS AND JAILS IN THE UNITED STATES.

Reproduced from Management strategies for combatting prison gang violence, by Camille Graham Camp and George M. Camp. Washington, For sale by the Supt. of Docs., G.P.O., 1988. p. 1-6.

Introduction

Significance of the Prison Gang Problem

Prison gangs have emerged as a major disruptive force within a large number of correctional systems. Where gangs exist, they are responsible for a substantial amount of prison violence. Finding ways to control gangs and to reduce the level of violence they generate has proven to be a very difficult task.

In a national study of prison gangs, their presence has been reported in 32 state prison systems and the federal prison system.[1] More than 100 gangs have been identified and reported to have nearly 13,000 members. In 1986, correctional agencies reported experiencing an average of 361 assaults against inmates and 254 against staff.[2] While gang members account for only a small percentage of all state and federal inmates, prison administrators attribute 50 percent or more of their problems with inmates to gangs. Therefore, it is not unreasonable to assume that a significant number of inmate homicides and reported assaults are directly related to the presence of prison gangs.

This report presents the issues raised in the course of seeking solutions to the problem of gang violence, and discusses options available to administrators, along with the practical consequences of selecting them. It is based primarily on first hand observations and analyses of the experiences of three state correctional agencies and how they have responded to prison gangs over a number of years.

Agency Need for Gang Violence Management Strategies

Prior prison gang research revealed the extent to which prison gangs are becoming an increasingly significant problem for prison systems that have not had to deal with them until recently. More than half of the jurisdictions reporting the presence of prison gangs in 1985 indicated that they had appeared in their institutions since 1980. Further research and study of the problem has revealed frustration in dealing with the problems created by the gangs and stopping their activities.

Probably the breadth and depth of the problem are best exemplified in California, where the Department of Corrections continues to grapple with the violence generated by prison gangs. It has risen to a level of concern where one of the Department's major goals is "management control of inmate violence through the establishment of standardized gang management/administrative segregation practices and the analysis of alternatives to better manage the violent inmate and parolee." (Violence in California Prisons: Report of the Task Force on Violence, Special Housing, and Gang Management, Department of Corrections, Sacramento, California, November, 1986.)

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[1] George M. Camp, and Camille Graham Camp, *Prison Gangs: Their Extent, Nature, and Impact on Prisons*, U.S. Government Printing Office: Washington, D.C., 1985.

[2] George M. Camp and Camille Graham Camp, *The Corrections Yearbook*, Criminal Justice Institute: South Salem, New York, 1987.

The magnitude of the problem facing prison managers across the country was described in that same report in terms of the extent to which gangs are responsible for violence and criminal activities in every jurisdiction in which gangs are present. The extent of that violence and criminal activity in Texas has been documented in terms of the large number of inmate murders in the mid-1980's that were attributed to gang activities. In 1984, twenty-five inmates were murdered; in 1985, twenty seven were killed.[3] The degree to which gangs escalate the level of violence was made tragically apparent in Illinois, where a senior prison manager was murdered by gang members at Pontiac in late 1987.

Goal: Find Management Options for Administrators

The research is directed at meeting three major objectives:

- To formulate the issues that arise in the control of prison gangs and the violence they generate.
- To present a series of strategy options from which correctional administrators might choose to address these issues.
- To explore the possible consequences of initiating various options under various circumstances.

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[3] Accounts and analysis of the levels of violence in Texas prisons are reported in Sheldon Ekland-Olson. "Crowding, Social Control and Prison Violence: Evidence from the Post Ruiz Years in Texas," Unpublished document, 1985, Sheldon Ekland-Olson, S. D. Barrick, and L.E. Cohen, "Prison Overcrowding and Disciplinary Problems: An Analysis of the Texas Prison System", Journal of Applied Behavioral Science, Vol 19, No. 2, 1983, pp. 163-176, Sheldon Ekland-Olson, "Judicial Decisions and the Social Order of Prison Violence: Evidence from the Post Ruiz Years in Texas," Department of Sociology, University of Texas, 1985, "Inside America's Toughest Prison", Newsweek, Oct. 6, 1986, Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons: The Walls Came Tumbling Down*, (Austin: Texas Monthly Press, 1987)

- To convey a detailed case study of one prison's experience (the Washington State Penitentiary at Walla Walla) in dealing with gang violence and a brief overview of the experiences of the California and Illinois Departments of Correction.

The study does not test the direct relationship between the application of certain strategies and specific changes in the level of institutional violence that may be attributed to those strategies.

Case Study Approach To Gaining Management Options

To shed light on prison gang issues, strategies, options, and the likely consequences of these options, the work was approached as a series of case studies, the results of which would be synthesized into a final report, incorporating and relating the findings from each agency and institution into a single framework. As such, an historical perspective was sought to determine the changes in levels of violence, the degree and intensity of gang activity, the ways in which administrators viewed gangs, the strategies employed over time and circumstance, and the outcomes that resulted. Recognizing that it was difficult, if not impossible, to determine precisely why those results occurred, it was judged to be more appropriate to determine what occurred, including what management strategies and tactics appeared to be most helpful in controlling gang violence.

Three state correctional systems - California, Illinois, and Washington - were selected for detailed exploration and assessment of management strategies to control prison gangs and reduce the level of violence. Five prisons - Folsom and San Quentin (California), Pontiac and Stateville (Illinois), and Walla Walla (Washington) were chosen for study. Each had (1) experienced prison gangs for twenty years or more, (2) employed a variety of strategies over that period of time, (3) reported fluctuating violence levels that had been attributed to the presence of gangs, (4) achieved some successes and acknowledged some failures in their attempts to reduce prison violence, and (5) were willing to open their agency records and reports, their institutions, and their staff to study.

While the chosen institutions shared some characteristics, experiences, and strategies, they were also unique. Each one offered a variety of important differences that contributed to the applicability of the management strategies and options for prison administrators in a variety of different settings across the country.

Walla Walla experienced its first real exposure to gangs and gang violence in the early 1970's. The gangs, which emerged from institutionally approved clubs and organizations, precipitated severe disruption of normal institutional activity and significant amounts of violence. Ethnic and racially oriented groups, along with motorcycle gangs whose members had been bikers prior to coming to prison and who continued to maintain close ties with bikers outside the prison, formed elements of the key gangs. The institution eventually was successful in bringing the gangs under control, preventing their spread to other facilities, and sustaining those achievements for several years (up to the present time), as well as reducing violence levels. Violence levels reached their peak in the mid-1970's, diminished significantly beginning in 1980, and have remained relatively low through the 1980's.

At San Quentin and Folsom, as well as in the rest of the California prison system, prison gangs have long been a major factor in prison management. The gangs appear to have been born in prison, rather than being a creation or carry-over from gang, or gang-like, organizations on the "street". When prison gang members were eventually released, community-based ties were solidified or expanded from the contacts gang members had made in prison. California's experience is unique in the sheer magnitude of the problem, the number of gang members, the viciousness of inter-gang rivalries, and the level of violence directed at both inmates and staff. For more than twenty years Department officials have been wrestling with ways to control gang violence.

Illinois has lived with more prison gangs and young members over a longer period of time than other correctional systems. The gangs owe their origins to the social, political and environmental fabric of the greater Chicago area that feeds the Illinois prisons a large percentage of their inmates. In the two institutions that were studied it is estimated that 90 percent of the inmates are either members or affiliates of an active gang. The number of inmates officially identified as active gang members is significantly lower. There can be no question however, that gang activity is a way of life for inmates confined at Pontiac and Stateville, just as it was prior to admission and just as it is likely to be following release from prison.[4]

These three systems and the five institutions studied employ a rich variety of approaches applicable to the management of prison gangs. A more detailed description of each correctional system's experience with prison gangs is included in the "Case Study Synopses."

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[4] The origins and evolution of Illinois prison gangs have been traced and discussed by Jacobs (1977), Camp and Camp (1985), and the by James B. Jacobs in Stateville: The Penitentiary in Mass Society, University of Chicago Press, Chicago, 1977, by Illinois Department of Corrections.

Presentation of Strategy Options and a Case Analysis

The results are presented in two parts. The first presents management strategies organized around a series of issues that bear most directly on controlling prison gang violence. Particular issues were chosen to frame the strategies because they seemed to be most relevant to the experiences of the three correctional agencies. Strategies and tactics are presented within the following list of issues.

Agency Policy Concerning Prison Gangs
Initiatives of the Director of a Prison System with Gangs
The Development and Use of Prison Gang Intelligence
Classification as a Tool to Combat Gangs
Program Considerations for Gang-Infested Prisons
Using Housing Arrangements to Combat Gangs
Training Staff Concerning Prison Gangs
Discipline Related to Prison Gangs
The Policing of Contraband and Prison Gangs
Inmate Management Principles Related to Gangs
Responses to Critical Gang Situations
Lawsuits Related to Prison Gangs

At the end of Part I, three case study synopses describe the experiences of the California, Illinois, and Washington correctional systems with prison gangs.

Part II isolates and explores the range of management strategies and their consequences at the Washington State Penitentiary at Walla Walla. The original intent of the study was to prepare a series of in-depth case studies of the gang management experiences of several correctional agencies. The first site examined was Walla Walla, from which resulted an in-depth written account involving considerably more time and effort than had been foreseen. While there was sufficient project time remaining to examine California's and Illinois' experiences, there was not enough time to prepare individual in-depth written accounts of each. The more relevant factor, however, in the decision to include the Walla Walla case study rests in the learning experiences themselves. More so than in California and Illinois, Washington experienced extreme lows and highs in gang management. Different management strategies were applied with varying results from the time just prior to the disruptive inmate groups' presence, through their ascendency, their violent and stormy periods of disruption, their decline, and their eventual disappearance. While the experience is unique to Walla Walla during that particular period of time, it offers the opportunity to view a completed circle - one that includes a complete range of experience with disruptive inmate groups.

The strategies, options, and suggestions offered here are recognized as not being applicable universally, nor are they claimed to be the only ways to address prison gang violence. Every correctional agency and prison is unique. Time and circumstances have produced a variety of situations, no two of which are identical. It is hoped that the results will be useful to administrators who are coping with prison gangs and that they will be able to take full advantage of the experiences of the agencies and institutions examined in this study. It is also hoped that the options here will stimulate thought and discussion leading to the development of strategies which might be more appropriate to their specific situations.

Reproduced from U.S. Dept. of Justice. National Institute of Law Enforcement and Criminal Justice. Prevention of violence in correctional institutions. Washington, The Department, 1973. p. 15-29.

SOURCES OF COLLECTIVE VIOLENCE IN CORRECTIONAL INSTITUTIONS

Edith Elisabeth Flynn, Ph.D.
Assistant Professor of Sociology and
Associate Director of the
National Clearinghouse for Criminal Justice
Planning and Architecture,
University of Illinois, Urbana, Illinois

Introduction

The specter of increasing violence and full-scale, bloody riots in this country's prison system has resulted in intensified efforts to identify some of the causes or correlates of prison violence. While there is a dearth of empirically verified information as to the exact causes of prison riots, there is a growing body of knowledge in the behavioral sciences, backed by the experiences of correctional administrators and on-site observations at institutions experiencing riots. The use of empirical information coupled with new knowledge in the behavioral sciences is sufficient to permit a tentative identification of some of the underlying conditions of prison riots and an approximation of some of the causal relationships between the patterns of institutional disorders. It is the purpose of this paper to examine this body of knowledge and analyze the state of the art in order to obtain a clearer understanding of the conditions that generate or elicit collective disorders, as well as to suggest some directions for future research in developing more effective techniques for crisis intervention.

The Historical Pattern

A brief review of institutional riots and disturbances reveals not only a cyclical pattern of periodic flare-ups every decade or so, but also a steady increase in occurrences of disruptive behavior and a change in the seriousness of the riots in terms of more severe personal injuries and loss of life (1). Although information on earlier prison riots (1920-1950) is sketchy, violence was usually brief, it cost few lives, and involved few hostages. The years of 1929 and 1952 saw a rash of riots; in 1952 and 1953 there were more than 45 riots involving more than 21 states. Since 1954, the number of outbreaks has declined--until 1969, when violence and injuries increased in severity with each consecutive year. It is obvious from this account that prison violence is not a recent phenomenon; it has always been with us, even though some of its elements and characteristics have undergone noticeable changes in recent times.

The Reasons for Violence

An examination of official reports and publications on the subject of riots reveals a relatively consistent melange of the following reasons (2): poor, insufficient or contaminated food, overcrowding, excessive size and obsolete physical plants; insufficient financial support and public indifference; lack of professional leadership, substandard personnel, inhumane prison administration, and brutality of prison officials; inadequate treatment programs or none at all; enforced idleness and monotony; political interference with personnel and programs; and groups of unusually refractory hard-core inmates. Most recent observations and reports tend to include conspiracy theories which involve both inside and outside agitators. The question needs to be raised as to exactly why these factors should be the reasons for riots and violent behavior when such conditions prevail in most institutions, not just in those experiencing riots. In view of this observation, it should be apparent that none of the standard complaints of administrators and inmate grievances can in themselves be considered sufficient to explain prison violence, although they are probably necessary, accompanying conditions. The explanation of riotous behavior, therefore, must go beyond the obvious, simple reasons into the deeper social fabric of the prison to examine the more fundamental structures and functions of the system and their relationship to prison violence.

The Informal Social Structure of Prisons

One of the most significant aspects of any prison system is the fact that it is run by the implicit and tacit consent of the inmates (3). Few administrators will dispute the fact that inmates could seize control over an institution at any given moment should they wish to take that risk. This is a possibility inherent in those institutions in which large numbers of inmates are managed by small numbers of supervisory staff, and it results in the development of an informal social organization among the inmate population, complete with value system, stratification and informal social controls. All of which contribute to the maintenance of the institution. The prime mechanism of control, therefore, is not so much the use of force as it is an intricate web of informal and symbiotic social relationships between inmates and staff, motivated by the administration's desire to maintain order. Conformity to the rules of these relationships on the part of the inmates assures a predictable atmosphere for all concerned, facilitates such daily operations as the exchange of goods and services between inmates and sometimes even staff, and also assists custodial aims. While the existence of this network of relationships is denied by the formal structure and mandate of the correctional system, it is tacitly acknowledged by most of those working in the system; it is here that one of the primary sources for prison violence can be found. Any drastic change in administration which affects and alters these relationships or disrupts the routine can upset the precarious balance and enhance the probability of violence and disruptive behavior. It is important to note that this tendency to disrupt prevails regardless of whether the institutional change is for the better or the worse, a fact frequently misunderstood by the public and some administrators as well. Another important observation is the fact that the actual outbreak of violence tends to be delayed because changes require time to reverberate throughout the entire system. As a result, spontaneous violent outbursts seem unfounded and irrational, frequently conceding the actual or predisposing causes under the facade of precipitating factors.

The first factor, therefore, in identifying conditions that generate collective disorders is to institute changes with the greatest of care and with continuous monitoring as to their effects at all levels for an extended period of time. It is here that a fully functioning system of communications is indispensable. Whenever communication patterns fail, disorganization and violence follow (4). In addition, implementation of any changes, however routine, in large scale institutions should always be viewed as potentially disruptive to the informal social structure and hence be regarded as a definite danger point. This observation is equally valid where mere announcements of forthcoming changes have been made to staff and inmates alike, since inmate anticipation of disruptions can be just as instrumental as accomplished change in eliciting riots. The first reaction in the face of this analysis may well be the temptation to maintain the status quo of our institutions as the best insurance for preventing riots, but this is impossible. First, it would be impossible to keep out the rapid and dramatic change taking place in society at large, since inmate populations reflect population shifts on the outside. Second, ordinary personnel changes and the turnover of staff from warden on down must also be expected to effect changes. Finally, in view of the recognized failure of our institutions to rehabilitate, changing of present methodologies and procedures holds the only promise for improved performance.

Racial and Political Tensions

While the requirement for inmate cooperation in running institutions is just as true today as it was decades ago, the experience of the past few years indicates a dramatic change in the ground rules by which institutions function. There appears to be less willingness on the part of prisoners to exercise a controlling effect over other inmates, which is accompanied by an increased toleration of the use of violence on the part of fellow inmates. There are other important factors as well. Cumulative social and economic changes, reflecting increased political and racial tensions of society at large, have established conditions for revolt and unrest in our prisons at an unprecedented scale. While our institutions have always contained disproportionate numbers of minority groups, the growth of Black and Puerto Rican populations within our prisons and jails is adding a special dimension to an already difficult situation. First, the prison environment tends to exacerbate and magnify problems of race relations by pitching together almost diametrically opposed groups. On the one hand is the sophisticated urbanized Black or other minority member, keenly aware through the influence of the mass media and literature of racism, differential opportunity, and civil rights movements in society; on the other hand is the lower echelon correctional officer who is characteristically rural, white, conservative, and reluctant to change. It is easy to see that such vast ideological differences not only preclude the formation of the necessary informal relationships but also present a potentially explosive mixture. Second, in view of the previously mentioned population shifts, prison populations reflect the general growth of militancy in the Black community. For example, there is accumulating evidence that Blacks increasingly view themselves of being capable of taking action on their own behalf. In addition, due to the relatively recent dramatic and militant politicization of minority groups, many exhibit a readiness to accept the concept of physical force. This latter phenomenon is rooted, of course, in the raised hopes of the early progress of the civil rights movement and the subsequent disillusionment when the "dream" did not materialize. Frustrated aspirations gave rise to full scale riots and provided, in addition, the motive for the large scale mobilization of Black youth. Since 1965, riots have had increasing political overtones, which, in fact, may serve to mask nonpolitical issues.

Of growing importance in the politicization of prison life, however, are militant separatists and radical ideologists of leftist and rightist persuasion. An analysis of the "profile" of the militant, based on available research of this group in the community setting, has relevance for the correctional system, not only because it holds this type of prisoner in increasing numbers, but also because he represents a new breed of prisoner with whom administrators must deal. Stated briefly, racial militants are most often found among male youths, and they are more likely to be urban socialized, better educated and more politically sophisticated than comparative groups of Black conservatives (5). They tend to report higher rates of abusive reactions from police, are considerably more disenchanted with whites, and they are far more likely to assign full responsibility for changes in race relations to whites. Finally, they are more likely than nonmilitants to endorse the advancement of their cause by any method necessary, including violence as a legitimate last resort, and to engage personally in radical redress strategies that involve force. It is interesting to note that none of these characteristics are particularly anti-white. They are a far cry from the inveterate pronouncements of true radical revolutionaries whose primary goal is the total destruction of the American way of life.

While there can be no doubt as to the disruptive existence of radical ideologists and politically motivated agitators in our prison system, they are probably few in number, and hence less likely to be a significant problem in terms of control. Definitive answers, however, must wait the completion of empirical studies.

The second factor, therefore, in our search for improved means of controlling conditions conducive to collective disorders is the need to differentiate between ordinary militant minority members and the true revolutionary of the New Left or similar orientation, who tends to use this inmate category for his own frequently covert and destructive purposes. In order to facilitate separation and differential handling of inmates in both categories, improved classification techniques, sensitive to these differences, are required. There can be no doubt but that the current composition of inmate population in our institutions of radical idealogists with common criminals has accelerated the politicization of minority members, to the detriment of the goals of rehabilitation and reintegration. Therefore it is necessary to refute categorically any notion or suggestion on the part of inmates, or vested interests outside, that ordinary criminal behavior should somehow be rationalized and dignified by labeling it political activity. The information exchange between the ordinary criminal and the radical ideologist results in the worst possible combination for society. Whereas radical ideologists absorb the criminal technology of common criminals, the latter are furnished with a ready-made critique of society and a complete set of relationalizations for their predatory activities. It is obvious that programs and rehabilitative efforts under these circumstances will be futile. In addition, this peculiar mixture of prisoners is probably one of the most unholy alliances and explosive combinations to be found anywhere in the world.

The Influence of Relative Deprivation

There can be little doubt that the renewed rhetoric and promise of reform of our prison system has greatly contributed to the raising of expectations of prisoners, only to disappoint them by token improvements or delays in implementation. A major precept of relative deprivation theory suggests that the degree of dissatisfaction among persons is not so much determined by the absolute level of their achievement or deprivation but by the perceived discrepancy between their achieved status and some important goal. Relative deprivation plans a major role in inciting ghetto riots whenever raised aspirations are not fulfilled or are fulfilled too slowly. Since prisons experience similar conditions, the hypothesis can be made that relative deprivation not only increases the general propensity for violence, but it also plays a significant role in prison violence and riots.

Relative deprivation theory appears to have particular relevance for understanding riots in view of the many investigative studies, commissions, and reports which have been launched and conducted thus far, for the explicit purpose of exploring prison violence and formulating recommendations for prison reform. Finding themselves at the receiving end of countless visits, surveys, and investigative inquiries, administrators and wardens can attest to the fact that prisons are being extensively studied while sufficient funding for the implementation of the recommended reforms never materializes. Inmates observe legislators, investigative teams, and the press come and go, only to see real or perceived gains fade into psychological losses when they are compared with the harsh realities of their existence.

The third major factor, therefore, in our pursuit of sources that generate collective disorders is the need to recognize that a fair number of prison riots are generated by the frustration of inmates whose expectations have been raised too often and too long without being given the means to achieve such legitimate goals as decent levels of existence, the satisfaction of basic human needs, and a minimum number of programs.

The Treatment and Custodial Dichotomy

In the pursuit of improved correctional practice, researchers frequently point to an alleged inherent conflict between the objectives of treatment and reform and the correctional institution's demand for control. Basically, a dichotomy exists between the precepts of treatment and punishment, and it tends to emerge whenever the professional ideology of treatment staff clashes with that of custodial and administrative personnel. Role conflicts between treatment and custody staff are not so much a result of the incarceration process as such; rather, they are due to the particular environmental setting characteristic of large-scale institutions. The effects of size upon institutional climate are well known; the central features of total institutions, as epitomized by rigid schedules, mass movement, batch living, depersonalization and self-mortification, all function to produce an atmosphere antithetical to the goals of resocialization, thereby precluding effective rehabilitation. As a result, institutionalization of environmental changes, smaller facilities in urban locations and modular treatment units to facilitate individualized program approaches appear to be the only solutions to an otherwise insoluble problem.

A closely related point in the light of the previous discussion is the fact that smaller facilities would preclude the need for excessive reliance on inmate labor for the running of institutions, which has been clearly identified as the primary cause of staff corruption. Reduced service and maintenance needs, along with the employment of rehabilitated offenders, would go a long way toward alleviating this perennial problem.

Any consideration of the traditional role conflict between treatment and custodial personnel would be remiss if it did not attempt to go beyond the question of the environmental and social changes required to avoid staff corruption and into an analysis of the importance of the attitudes, relationships, and experiences of staff in the performance of their duties. Whenever the staff acts oppressively and sadistically, or when it becomes obsessed with custodial containment, the foundation has been laid for violent retaliatory behavior by the inmates. The manner, therefore, in which staff resolves its own hostilities becomes vital to a well-functioning institution.

A final point concerning staffing needs to be considered. Some professionals, especially those new idealists fresh out of college, may unconsciously communicate their own ambivalence regarding their work and society in general to their clients. This ambivalence may be particularly aggravated whenever a pronounced dichotomy exists between treatment and custodial staff and whenever treatment and program recommendations are consistently overruled in favor of custodial decisions. The ensuing cynicism and frustration on the part of treatment staff can only be counterproductive to the overall goals of corrections, and such feelings may, in fact, be communicated to the inmates, thus supplying a sanction for violent behavior. It needs to be recognized that a person who is cynical or despairing of the system cannot be expected to work honestly and effectually within such a system. As a result, good staff development and training programs, combined with careful selection of personnel, will go far to improve this situation.

The fourth major factor, therefore, in alleviating violence-prone conditions is the recognition that social and physical environmental changes are needed to bridge the traditional gap between custody and treatment, and that these changes must be paired with improved personnel selection and training. Once the traditional differentiation between supervisory, line, and treatment staff is dropped in favor of one category, such as that of the correctional counselor, the problem of conflicting goals can be eliminated.

In conclusion, we must abandon superficial explanations of collective violence and examine intensively the fundamental processes and structures governing this complex phenomenon. It is the contention of this paper that the wave of collective violence currently experienced by our institutions can largely be attributed to the following distinct factors: (a) the excessive reliance by staff on the acquiescence and cooperation of a pervasive inmate intrastructure, a practice which seems to derive from the very nature of large-scale, total institutions; (b) absent or restricted communication patterns which seriously impair the airing of legitimate inmate grievances and the detection of impending unrest; (c) failure to recognize the root causes of racial and political tensions which are reflections of tensions in society at large; (d) insufficient differentiation between militant and revolutionary prisoners, paired with the failure to physically separate these inmates; (e) insufficient awareness of the fact that ordinary criminal behavior is often rationalized and disguised as political activity; (f) failure to consider the effects of frustrations and the perception of deprivation in the light of promised prison reform; and (g) perpetuation of social and physical environments which are antithetical to the goals of correction and resocialization.

In recognition of these factors, present practices and techniques must change. The problems and the directions for reform have been identified. What is needed now is the commitment to carry through.

NOTES

1. A comprehensive analysis of prison violence is currently being conducted as part of a research project on "Collective Violence" by the South Carolina Department of Corrections, William D. Leeke, Director.

2. Committee on Riots, American Prison Association, *Prison Riots and Distrubances* (New York: American Prison Association, 1953), p. 7; see also *Riots and Disturbances* (Washington, D. C.: American Correctional Association, 1970).

3. Hans W. Mattick, "The Prosaic Sources of Prison Violence," *Occasional Papers* (Chicago: The Law School, The University of Chicago, 1972).

4. Winston E. Moore, "My Cure for Prison Riots" (Chicago: Cook County Jail, 1971), unpublished.

5. T. M. Tomlinson, "Determinants of Black Politics: Riots and the Growth of Militancy," *Psychiatry*, Vol. 33, No. 2 (May, 1970), pp. 247-264; see also T. M. Tomlinson, "The Development of a Riot Idealogy Among Urban Negroes," *American Behavioral Scientist* (March-April, 1968), pp. 27-31; and T. M. Tomlinson, "Ideological Foundations for Negro Action: A Comparative Analysis of Militant and Non-Militant Views of the Los Angeles Riot," *Journal Social Issues* (1970), p. 26.

6. Leonard Berkowitz, "The Study of Urban Violence: Some Implications of Laboratory Studies of Frustration and Aggression," *American Behavioral Scientist* (1968), Vol. 11, No. 4, pp. 14-17. See also Ralph W. Conant, "Rioting, Insurrection and Civil Disobedience," *American Scholar* (1968), Vol. 37, pp. 420-433; Philip Hauser, "Mounting Chaos at Home," *Bulletin of Atomic Scientists* (January, 1968), pp. 56-58; Otto Kerner, *Report of the National Advisory Commission on Civil Disorders* (New York: Bantom Books, 1968).

Reproduced from U.S. Department of Justice. Office of Legal Policy. Prison gangs: their extent, nature and impact on prisons. Washington, For Sale by the Supt. of Docs. G.P.O., 1985. p. vii-xx.

EXECUTIVE SUMMARY

Prison gangs developed in a number of prison systems during the 1970's and early 1980's. They have gained national attention because of the growing numbers of gang-related murders, assaults, and disruptions. In early 1983, the Department of Justice's Office of Legal Policy provided funding to the Criminal Justice Institute to conduct a national study of prison gangs, including their nature and extent, their effects on prisons, prisoners and administrators, and current strategies devised to cope with and manage prison gang situations. All state prison systems and the Federal Bureau of Prisons were included in the design and 94 percent of the agencies participated.

EXTENT OF PRISON GANGS

Thirty-three agencies reported the presence of prison gangs. Twenty-nine agencies identified 114 individual gangs with a total membership of 12,634. The most gangs were reported by Pennsylvania (15) and Illinois (14). The largest number of gang members are in Illinois (5,300), Pennsylvania (2,400) and California (2,050). As a proportion of all inmates in state and federal prisons, gang members make up 3 percent.

The gangs began in the west in Washington State in 1950. There is no evidence to indicate that there was any connection with the beginning of prison gangs in California in 1957. Twelve years later, in 1969, prison gangs began in Illinois. During the 1970's, states adjacent to California and bordering Mexico, as well as two states to the north of Illinois developed gangs. The development of gangs on these eastern and southern borders of the country seems isolated and unrelated. In the 1980's, development continued in Missouri and Kentucky, adjacent to Illinois, but independent from it.

There has also been movement southward and toward the northeast. Administrators attribute some of the "spread" of prison gangs throughout the country to interstate transfers of gang members. Because of the scarcity of reports on specific transfers of gang members, this research was unable to show any patterns of movement resulting in growth. There is evidence, however, that gangs spread either by transfer or re-arrest of gang members in another jurisdiction. In these cases the inmate in a new prison setting sometimes tries to reproduce the organization that gave him an identity in the prior prison setting. In many cases, charismatic leaders imitate what they have heard about other jurisdictions' gangs. Many even adopt the name of a gang from another jurisdiction, but have no affiliation or communication with the gang they have tried to replicate. The phenomenon of racism is fierce inside prisons and gangs usually organize along racial lines. Emulation of a gang in another jurisdiction is usually part of racial organization efforts.

NATURE OF PRISON GANGS

Gangs were described as being slightly more disorganized than organized, and slightly unstructured. The number of members in a gang varies widely. Gangs are more unsophisticated than sophisticated. More than half of the gangs use violent tactics to carry out their activities. Nearly half of the gangs use an impersonal style of conducting business, and half use a more personal, small family business style of operation. A wide range of rule making is utilized, with more operating on the leader's whims rather than on structured rules. Most of the gangs have a high degree of camaraderie, indicating more agreement than dissension. Almost three-quarters of the gangs project a macho image. The extent of money and service transactions vary widely gang to gang, although large transactions seem preferred. Thirty-eight percent of the gangs studied appear to shun publicity. Only ten leaned toward publicity seeking activities. More gangs were rated covert than overt in their behavior.

Geography and ethnicity are the two most significant criteria in determining gang types. Membership is based first on race, and is usually connected with racial superiority beliefs, e.g. Aryan Brotherhood. Second, prior affiliation or association with members in a close-to-home location can strongly influence membership, e.g. Vice Lords. Next in importance is the sharing of strong beliefs, political and/or religious, e.g. Black Guerilla Family. Finally, sharing a lifestyle of motorcycle machoism influences membership, e.g. Avengers. There are overlaps in types. The Black Guerilla Family is both political and racial. The Aryan Brotherhood is both motorcycle oriented and a white supremacist organization. The Mexican Mafia has both a racial and geographic basis.

General Structure and Operation of Gangs

Membership is derived from either past association with current gang members or by general acceptance of current gang values. Very little is known firsthand about how inmates become members of gangs, except when prison gang membership is directly related to street gang membership. Of thirty-five gangs studied, nine use some non-violent form of initiation, while eight require the candidate to commit a violent act against another inmate or staff member. Six gangs use either form of initiation depending upon the specific circumstances. The payment of dues is frequently associated with membership in a gang. Only eight gangs, six of which are motorcycle oriented, have levels of membership.

In nearly two-thirds of the gangs, membership is perceived as a life-time commitment, "blood in, blood out". Leaving the gang is an act of betrayal and, in many cases, the consequences are harsh. Twenty-three of the 41 gangs fall into the life-long category where the only reputed way out of the gang is natural death or murder. In reality, the consequences do not seem to be as brutal. It is also usual for gang affiliations to dissipate when the gang member leaves prison.

Leaders are distinguishable from their followers. Physical prowess, seniority, commission of violent acts and leadership qualities elevate a member through the gang hierarchy. Leadership and direction for the gang is provided by a single strong leader in some instances. In others, a strong leader shares these powers with a committee or council. In 11 gangs the leadership and direction is derived from a committee or council without the benefit of a single strong leader; in three gangs neither a single leader nor a council was present, and the gang functions in a relatively leaderless manner. A prison gang leader's tenure appears to be relatively short (Median = 2 years). The succession of leaders in the gang occurs either when the strongest of the remaining members takes over by the force of his personality or through a meeting of the minds of the membership or its elite. In instances other than these, the actual method of succession is not known.

The essential elements of gang member behavior are loyalty to the gang, by a code of secrecy, and an outwardly cooperative attitude to prison authority. The most frequently used tactics to maintain order, loyalty and obedience to the gang are fear, intimidation, and threats of violence. There is a total disregard for human life. The sanctions for killing another inmate are of no consequence to the gang member who is a "true believer."

All gangs share an emphasis on power and prestige, measured in terms of ability to control other inmates and specific activities within the institution. Money, drugs and personal property represent tangible symbols of a gang's ability to control and dominate others, and of its ability to provide essential protection, goods and services for its members. The gang's ability to bring status and prestige to the members reinforces gang commitment and solidarity.

One of the distinguishing characteristics of the prison gang is the virtual absence of any non-criminal, non-deviant activities. Gang members engage in some institutional pastimes, weight lifting being one of the more notable, but in general their activities are criminal or deviant in nature. The gang member is completely immersed in being a career prison gangster, leaving little time and less inclination for other than asocial behavior.

Gang relationships are on gang terms only. Members avoid contact with non-gang members except to do business with them. Doing business means taking advantage of and controlling other inmates. Because they can be controlled, they are perceived as being weak and therefore worthless. This behavior reinforces the gang member's position that he is doing nothing wrong. Universally the prison gang tolerates the prison staff, but only barely. They avoid contact with the staff as much as possible. Assaults, including fatal assaults, on staff have occurred with increasing frequency in the last few years. Staff appear to be viewed as a constraint that must be worked around, but they are not to seriously impede the gangs efforts.

PRISON GANG PROBLEMS

The degree to which prison gangs create problems for administrators varies considerably. In three states where gangs exist, they are not even considered a problem. In another 11 states, prison gangs account for five percent or less of the problems. At the other end of the continuum, in three states the gangs account for 85 percent or more of the inmate problems. In six other states, 50 to 85 percent of the problems are attributable to gangs.

Gang Activity vs. Prison Operations

The types of problems created by gangs include the introduction and distribution of drugs; intimidation of weaker inmates; extortion that results from strong-arming; requests for protective custody status; violence associated with the gang activity; occasional conflicts between gangs (usually racial) that create disturbances; and contracted inmate murders. Problems experienced by the administration are not necessarily directed by the gangs against the authorities, but are more directed at taking care of gang business, with the administration's discomfort perceived by the gang as merely incidental to the gang's activity.

According to the correctional agencies, prison gangs appear to have very little negative effect on the regular running of prison operations. Gang activity is not directed at disrupting operations but rather at taking advantage of regular institutional activities and routine to conduct gang business. Legitimate activities and clubs are affected the most, since inmate clubs are especially good vehicles for gangs to conceal criminal behavior under the guise of legitimate, institutionally approved meeting rooms and schedules, bank accounts, special money making projects, etc. At the other end, the area that seems least affected is inmate visiting. The gang takes care to protect the visiting privilege. Administrators reported also, however, that visiting is a major means of trafficking communications (money, drug, other gang business) back and forth between prison and the street. Again, the point is that the operations are not disrupted, but exploited.

In summary, the gangs' position, vis-a-vis the administration and its operations is that they will not disrupt operations or interfere with staff except when they judge it necessary, but that they are determinined to carry on their business without interference from the administration. It seems almost as though they presume a pact of mutual noninterference. However, there were 18 reported group confrontations with staff in six jurisdictions in 1983. Four states reported 51 staff being injured as a result of gang activity in 1983.

Inmate-inmate Problems

There tend to be more confrontations between gang members and non-gang members than between gang members and other gang members. In 1983, there were 88 confrontations reported by ten correctional agencies between gang members and non-gang members. Thirty-one confrontations between gangs were reported by seven agencies in 1983. Of the 119 total confrontations, slightly more than 25 percent were intergang disputes while nearly three quarters involved non-gang members. There seems to be a wide range in the degree of retaliative behavior among gangs, indicating that in some jurisdictions gangs develop alliances with one another and in others there is much competiton and disagreement among gangs. Although communication between gangs and gang members in different institutions and jurisdictions is minimal, it is of great concern to administrators.

In 1983, 20 inmates were killed as a result of gang activity in nine jurisdictions. Nearly half of these murders occurred in California (9), while Texas reported three, and Georgia reported two. The extensiveness of gang responsibility for inmate homicides in California is indicated by the fact that nine of the ten California inmate homicides in 1983 were committed by gang members.

Drugs

Almost without exception, administrators say that the gangs are responsible for the majority of drug trafficking in their institutions. The seven correctional agencies that judged the gang's responsibility greatest were Arizona, Hawaii, Kentucky, Maryland, Missouri, Nevada and North Carolina. During all of the site visits, administrators cited drugs as the major gang commodity.

Relationships of the Gang Membership to the Outside

Of the 33 correctional agencies that reported having gangs, 26 reported that all or some of the gangs in their institutions have counterpart gangs on the streets. About half of the agencies indicated that there was no evidence that the gangs use prison as a base for crime in the community. The others indicated that informants and reports from law enforcement agencies, had provided evidence that there was a prison base for criminal activity. The agencies that have more extensive gang involvement were the agencies that tended to report evidence of prison based activity.

Texas reported two deaths in the community directly related to gang activity. Since January of 1975, the California Department of Corrections has kept a running tally of deaths inside and outside the prisons attributable to gang activity. As of 1984, the gangs were responsible for 372 deaths.

IDENTIFYING AND TRACKING PRISON GANG MEMBERS AND ACTIVITIES

In general, the research revealed virtually no system for identifying, tracking and maintaining ongoing intelligence as to gang activity in the majority of the correctional agencies where gangs exist. The accepted methods and techniques of systematic intelligence do not exist.

Identification

Of the 33 agencies who reported having gangs, four indicated that they have no system of identifying gang members. The remaining 29 listed a total of 15 indicators used to make a positive identification of a gang member, (including self admission, tattoos clothing, colors, acts, case histories, other agencies' reports, possession of gang literature, hit lists, inmate association, correspondence, home address, photos, visitors and informants.) An intelligence officer spends an average of 14.2 percent of total work time identifying gang members. Apparently a few states spend a lot of time on identification activities and many states spend very little time on identification work. Seventeen jurisdictions go so far as to distinguish between full-fledged and associate gang members, while 16 do not.

Past or present motorcycle gang membership is very much indicative of current prison gang membership. Eight correctional agencies indicate that such affiliation has much bearing on prison gang membership. Ten agencies acknowledge some relationship, while seven note very little.

Documentation

Nineteen of the agencies who have gangs have no system for collecting and retaining files on gangs. Two agencies have plans underway to develop systems. Six agencies described an accumulation of materials; bits of information, evidence, reports etc. that is not kept according to any system that can facilitate retrieval or integration of information. Four agencies keep individual inmate files on each gang member, and two agencies use a section of the official inmate record to store gang information. Only two agencies report multifaceted systems of storing gang information that is retrievable for systematic intelligence purposes.

The most frequently used method of surveillance is direct observation of inmate activity by staff. Mentioned half as frequently is the use of informants. Monitoring of correspondence, inspection of regular institutional reports, and use of law enforcement agency information are less frequently used. Ten jurisdictions who have gangs reported that they have no means of surveillance to track gang activity. Except for the Federal Bureau of Prisons, no jurisdiction reported any mechanized or computerized system for tracking gang members' movement and activities during their incarceration.

Information Sharing

About one-third of the agencies studied share information with other agencies on an as-needed basis, while another third have intermittent, systematic sharing. The other third report systematic sharing with other agencies concerning gangs, gang members, and gang activity. Agencies recognize the need for a national gang intelligence network, coordination of information between jurisdictional agencies, state-of-the-art information equipment and systems, internal tracking of gangs and gang members, assigning full time staff to gang matters, scheduling regional rather than national information sharing meetings, and using informants. Administrators acknowledged that gang intelligence methods and information storage and retrieval were less than desirable, and few seemed to know exactly what was needed.

STRATEGIES

Thirty-three states with prison gangs reported using at least one of the listed strategies and two reported having used all of them at some time or other. These agencies averaged the use of five different techniques, or strategies, to deal with gangs.

Technique	Frequency Used
Move or Transfer	27
Use Informers and Prevent Events	21
Segregation of Gang Members	20
Lock up Leaders	20
Lockdown	18
Prosecute	16
Intercept Communications	16
ID and Track	14
Deal with Situations Case by Case	13
Refuse to Acknowledge	9
Put Different Gangs in Particular Insts.	5
Infiltration	5
Co-opt Inmates to Control	3

Eighty-two percent of prison gang agencies have used movement of gang members (sometimes called "bus therapy") to control gang activity. The high frequency of informer use indicates a perception that information is the key to control. The use of lockup, either in wholesale or isolated instances has obviously been a solution for many.

During visits to nine agencies where prison gang activity is significant, administrators rated the value of their strategies. The frequency with which strategies were utilized are presented in three categories.

Gaining and Using Information:	Frequency Mentioned
Identifying Gang Members	33
Intelligence	18
Use Informants	10
Share Information	7
Intercept Communications	6
Shakedown Regularly	1
TOTAL	75
Preventive Procedures and Actions:	
Good Communication with Inmates	30
Pay Attention to Job and Housing Assignments	15
Control Visiting	15
Prevent Recruitment	9
Enforce Mail Regulations	9
House Inmates in Small Units	6
Give Gangs no Credence	5
TOTAL	89
Curative Procedures and Actions:	
Separate and Isolate Leaders	37
Lock up Members	30
Prosecute	20
Interstate Transfer	20
Transfer Within the Agency	19
Lockdown whole Institution	7
Respond to Individuals Case by Case	5
Extend Release Dates as Sanction	5
TOTAL	143

Curative procedures are rated higher than the other categories, followed by preventive procedures and gaining and using information. Strategies scoring thirty or more points in the rating indicate that administrators clearly prefer the separation and isolation of leaders to other tactics. Valued highly as well is the identification of gang members. High on the list also is the lockup of members and good communication with inmates, two techniques that might possibly be termed mutually exclusive but which are probably reflective of two divergent general positions encountered during the visits.

One position seems to be that as gang activity affects innocent inmates who become victims, the innocent should be free to walk the prison yard and engage in constructive activity while the "gang bangers" are locked in segregation. The other position is that gangs are as much a fact of life in prison as they are on the streets; that prison is a community where all inmates and staff coexist; and therefore, misbehavior must be policed and dealt with as it is discovered and/or presented. Management of the prison emanates from whatever position is taken, whether it be either of these positions or another. If incidents of violence are a measure of success or failure, the former position which stresses lockup of gang members has resulted in more violence than the position that stresses good communication between staff and inmates. This is not to imply that those who stress lockup oppose good communications with inmates, nor that those who stress communication do not employ lockup for gang control.

In summary, there is a broad range of types of strategies to deal with gang problems. This range may be more indicative of individual differences in gang behavior and the prison environment in which they operate than of trial and error responses to gang crisis situations. Those agencies with gangs think that they have found solutions to the problems, even if their strategies are not working. Agencies tend to accommodate their problems. Identifiable models of prison gang management exist, but have not been tested for effectiveness.

MAJOR RECOMMENDATIONS

1. Agencies should develop a general position (policy) and strategy concerning gangs.

2. Administrators should learn to detect early signs of gang activity and gang members. Effective identification and tracking systems should be established or upgraded.

3. Models of gang control that have not worked under particular circumstances should be discarded and that information shared with other agencies to avoid replication of past failures. Models of gang control that have been successful under particular circumstances should also be shared so that they can be emulated as appropriate.

4. An overall screening system should be developed within an Interstate Compact clearinghouse to prevent difficulties such as spread of gangs, protective custody, jeopardy, etc.

5. Old, large, overcrowded prison facilities should be replaced with smaller facilities directly supervised by staff, thereby reducing the prisoners' perception that their "turf" is separate from staff's.

6. Prison Gang Task Forces have proven useful and should be extended to include other agencies and between agencies, regionally and nationally.

7. There should be a systematic debriefing procedure of former gang members to obtain pertinent and useful data, and a system for processing and using that data.

IMPLICATIONS FOR FURTHER RESEARCH

1. Established law enforcement tracking systems should be researched and the best techniques for gang member tracking should be tested in a system with prison gangs so that the most appropriate techniques can be implemented.

2. State-of-the-art technology should be researched to ascertain how computers and electronic technology may be used to receive and maintain information while ensuring the privacy and security of records.

3. Research should be conducted to identify the characteristics of prison environments that have gangs as opposed to those who do not to ascertain what types of prison management are not conducive to gang development and vice versa.

4. Existing relationships between prison gangs and their street counterparts should be researched, with particular emphasis on criminal activities between the two, i.e., extortion, protection of family members, pressure for and purchase of drugs. The methods by which street gangs merge into prison gangs should be determined so that preventive measures can be taken. Biker connections are highly suspect for assistance to prison gangs and the nature of their transactions with prison gang members should be investigated.

5. Emerging connections between prison gangs and organized crime elements should be investigated.

6. Within three years, a follow-up to this study should be performed to ascertain the changes in prison gang nature and extent, as well as further impacts on prison operations and strategies that are being used to deal with the problems.

RESOLVED:
THAT THE FEDERAL GOVERNMENT SHOULD EXPAND REHABILITATION PROGRAMS FOR CONVICTED CRIMINALS IN THE UNITED STATES.

Reproduced from U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Penitentiaries and Corrections. The role of prisons in society. Hearings, Senate, 95th Congress, 1st session, 1978. p. 14-20.

PREPARED STATEMENT OF ANDREW VON HIRSCH, GRADUATE SCHOOL OF CRIMINAL JUSTICE, RUTGERS UNIVERSITY

I am honored to participate in the Subcommittee's hearings on rehabilitation and the other aims of punishing convicted criminals. There have been important changes in thinking on these subjects in the last decade, and the Subcommittee is doing a service in focusing Congress' and the public's attention on them.

My own credentials can be stated briefly. I was principal author of "Doing Justice: The Choice of Punishments",[1] a study of the aims of criminal sentencing, funded by the Field Foundation and the New World Foundation. The report urged abandoning traditional rehabilitatively-oriented penal philosophy, as unworkable and unjust. It recommended, instead, a "just deserts" rationale in which the severity of penalty would depend on the seriousness of the defendant's crime or crimes. I am now completing a study on alternatives to parole, funded by the Law Enforcement Assistance Administration.[2]

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[1] Andrew von Hirsch, "Doing Justice: The Choice of Punishments" (New York: Hill and Wang, 1976).

I. WHY PUNISH?—REHABILITATION AND ITS ALTERNATIVES

The decline of the traditional rehabilitative penology.—The dominant penal philosophy during this century has been a therapeutic one. Punishment was supposed to rehabilitate. Judges, parole boards and correctional officials were supposed to have wide discretion so they could tailor the disposition to the offender's needs. Ten years ago, when the President's Crime Commission wrote its report, this conception was still preeminent.[3] Now—as the very fact of these hearings suggests—its influence is waning.

The defects of this therapeutic philosophy—which have been described in my book and several other recent studies[4]—can be summarized briefly.

The capacity to cure criminality is lacking. A wide variety of rehabilitative programs have been tried and evaluated, ranging from psychiatric counselling to Skinnerian behavior modification techniques. The results have been unimpressive. Not only do prison-based treatment programs fail, but "community based" programs outside prisons have been disappointing also.[5] This is not to say that nothing will ever work. Treatment methods might eventually be refined so they do succeed on carefully selected subgroups of offenders. But such sophistication may elude us for some time; and even when achieved, is apt to be limited in scope: A select minority might prove responsive to treatment, but hardly the bulk of the offender population. Nor is this to say that most offenders are incorrigible. Contrary to oft-quoted recidivism statistics of 70 or 80 percent, recent evidence suggests that most convicted offenders do not choose to return to crime.[6] The failure of rehabilitation consists, rather, in the fact that the offender's choice cannot readily be influenced by correctional therapy. It is his own experiences, character and outlook—rather than the state's treatment programs—which seem to determine whether he offends again.

The wide discretion which judges, parole boards and other penal officials have been granted, in the name of treatment, has led to gross disparities. Decisionmakers whose decisions are unchecked by general standards, we have learned, decide similar cases differently.[7]

Worst of all, the rehabilitative penology was simply unjust. It made the severity of punishment depend, not on the seriousness of the defendant's crimes, but on his supposed amenability to treatment. The defendant convicted of a grave offense could be treated in the community if he was considered a good prospect for rehabilitation; the individual convicted of a lesser infraction could be imprisoned if thought unresponsive to therapy. Offenders thus were being punished on the basis of what they were expected to do in the future, rather than on the basis of the blameworthiness of their criminal acts.[8]

In thus criticising the treatment rationale, I am not suggesting that we should stop experimenting with treatment programs. But what is essential is that we stop making the severity of punishment depend on treatment considerations: the offender's supposed needs for treatment ought not determine whether or how long he is confined. Once that decision is made on other grounds—once it is decided (say) that the offender deserves so many months' confinement for his crime—then and only then should one be able to select a treatment that can be offered within that space of time.[9]

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[2] This study, under LEAA Grant No. 76-NI-99-0038, will be completed in the late fall of this year.

[3] "Doing Justice," supra note 1, chs. 2-4.

[4] Ibid.; American Friends Service Committee, "Struggle for Justice" (New York: Hill and Wang, 1971); Twentieth Century Fund, "Fair and Certain Punishment" (New York: McGraw-Hill, 1976).

[5] James O. Robison and Gerald Smith, "The Effectiveness of Correctional Programs," 17 "Crime and Delinquency" 67 (1971); Robert Martinson, "What Works?—Questions and Answers About Prison Reform," "The Public Interest" (Spring 1974), p. 22; Douglas Lipton, Robert Martinson and Judith Wilks, "Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies" (New York: Praeger, 1975); Paul Lerman, "Community Treatment and Social Control" (Chicago: University of Chicago Press, 1975).

[6] See, e.g., studies reported by Robert Martinson in "In My Opinion," "Corrections Magazine" (December 1976).

[7] Marvin E. Frankel, "Criminal Sentences" (New York: Hill and Wang, 1972); Willard Gaylin, "Partial Justice" (New York: Knopf, 1974); Anthony Partridge and William B. Eldridge, "The Second Circuit Sentencing Study: A Report to the Judges of the Second Circuit" (Washington, D.C.: Federal Judicial Center, 1974). See, also, Caleb Foote, "The Sentencing Function," in "A Program for Prison Reform" (Cambridge, Mass.: Roscoe Pound—American Trial Lawyers Foundation, 1972).

[8] "Doing Justice," supra note 1, ch. 15.

The dangers of easy substitutes: Isolation instead of rehabilitation.—The first step—of rejecting the traditional rehabilitative penology—is easy to take, for the latter's defects are now well known. What is more difficult is finding an adequate alternative conception. It is upon this critical task which I hope the Subcommittee will focus its efforts.

There is a real danger that, when the rehabilitative view is rejected, we accept substitutes that are, in fact, little or no better. A striking illustration is found in an editorial a fortnight ago in the New York Times. After describing the failures of rehabilitation, the editorial seizes the next most obvious replacement: isolation. If we cannot cure criminals, the thinking runs, we should lock up those who are dangerous. In the edtorial's words: "* * * the realistic priority today is simply to keep thee apparently incorrigible from menacing others."[10]

But before embracing this view, we should stop and ask: How good are we at identifying who is and is not incorrigible? Is our capacity to predict dangerousness accurately so much better than our capacity to cure? It does not seem to be. Careful studies of prediction methods have shown that when forecasting serious criminality, there is a strong tendency to overpredict; most persons identified as risks will be "false positives"—persons mistakenly predicted to offend again.[11] And is this theory any more just than the rehabilitative conception it would replace? I think it is not. The severity of the offender's punishment—whether and how long he is to be imprisoned—would still depend on the offender's predicted future behavior, rather than on the blameworthiness of his past criminal conduct.

In fact, a shift to this kind of incapacitative rationale may be little change at all. Isolation of the dangerous was always present in the conceptions of rehabilitators. The idea was that—while the good risks should be cured—the bad risks should be separated from society until they are no longer a public hazard. A reading of any of the originators of the treatment ideal—Warden Brockway in later 1870's for example[12] discloses that (despite the rhetorical emphasis on rehabilitation) the point was always made that the system should seek to isolate those likely to return to crime.

Toward a fairer conception: Looking to the seriousness of the criminal conduct.—Punishment is a solemn act of imputing blame. Its severity should thus comport with the blameworthiness of the defendant's criminal conduct. To achieve a more just system, we should stop trying to base decisions about punishment on what we think the offender (or other potential offenders) will do. Instead, we should try to make penalties commensurate with the seriousness of the offender's crimes.

In my book, Doing Justice, I try to develop a model for punishing criminals which is based on this simple idea. The model is more fully described in the attached article which I wrote for Current History last year,[13] but its main features may be summarized as follows:

The primary criterion for the severity of punishment should be the gravity of the defendant's past crime or crimes. His supposed likelihood of offending again ought not determine the penalty.

Sentencing discretion should be considerably reduced, through standards which describe the quantum of punishment for different crimes. These would take the form of "presumptive sentences." For each gradation of seriousness, a definite penalty—the presumptive sentence—would be set. Offenders convicted of crimes of that gravity would normally receive that specific sentence. However, variations would be permitted when there were unusual circumstances of mitigation or aggravation.

Imprisonment, because of its severity, would be limited to serious crimes, such as offenses of actual or threatened violence and the more heinous white collar crimes. And even then, time in prison would be measured with strict parsimony: most stays in prison would be three years or less. For the nonserious offenses, penalties less severe than imprisonment would be used. These would not be rehabilitative measures but simply and explicitly, less severe punishments. Warnings, limited deprivations of leisure time and, perhaps, fines would be used.[14]

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[9] *Ibid.*; Norval Morris, "The Future of Imprisonment" (Chicago: University of Chicago Press, 1974).

[10] Editorial, New York Times, September 16, 1977.

[11] A. von Hirsch, "Prediction of Criminal Conduct and Preventive Confinement of Convicted Persons," 21 "Buffalo Law Review" 717 "Doing Justice," supra note 1, ch. 3; Norval Morris, supra note 9, ch. 3.

[12] Zebulon R. Brockway, "The Ideal of a True Prison System for a State," National Congress on Penitentiary and Reformatory Discipline, "Transactions" (1870).

[13] Andrew von Hirsch, "The Aims of Imprisonment," "Current History" (July/August 1976), p. 1.

Several states have recently been moving in this direction. Oregon has just adopted legislation which calls for the setting of standards on duration of imprisonment, and provides that the primary objective of those standards should be "punishment which is commensurate with the seriousness of the prisoner's criminal conduct." [14] Pennsylvania's House Judiciary Committee only this week reported a bill which creates a commission to set sentencing standards, and requires the commission to follow a similar rationale.[15]

A model such as this is intended to suggest the kinds of questions that we should be asking, rather than to provide neat answers. Important unresolved issues include the following:

How can criteria for the seriousness of crimes be devised? While sociologists have found considerable popular consensus as to which crimes are more serious than others,[16] translating such perceptions into workable standards, will be a considerable task.

What would the collateral crime-control effects be? In the "Doing Justice" model, for example, anyone convicted of a sufficiently serious crime would face some time in prison. Would this enhance deterrence, by increasing the likelihood of substantial punishment for such crimes? Would it have incapacitative benefits, as James Q. Wilson has suggested?[17] (Were all offenders convicted of serious crimes imprisoned for specific periods, he argues, those inclined to offend again would be taken out of circulation for a portion of their criminal careers.) A panel of criminologists and economists working under the auspices of the National Academy of Sciences has been studying how such effects could be measured—and found reliable estimates exceedingly difficult to make.[18] But the matter is certainly worthy of further study.

Were such estimates possible, how much should they influence the penalty structure? Here, there are a number of possible variants from the strongly desert-oriented view suggested in "Doing Justice." One is that suggested by James Q. Wilson in an article this spring—using a mixed model in which desert is given primary emphasis, but deterrent and incapacitative effects are given some weight; in Wilson's words:

"Were I given the task of designing penal sanctions, I would begin as a retributivist—i.e., as one who sees the first to be that of justice. I would try to propose penalties that seemed morally suitable for crimes and circumstances of various kinds. [Others] and I might disagree about some of these penalties, though I am willing to guess that, locked in a room for a day or so, we would find that we disagree on relatively few. But in justifying that schedule of penalties, based in the first instance on a concept of "just deserts," I would try to estimate the gains to society that might result from the deterrent or incapacitative effects of those penalties. Such facts and estimates would help society decide whether it agreed with those penalties and whether it was prepared to spend much or little to see them institutionalized." [19]

Another mixed model has been suggested by Norval Morris: the seriousness of the crime should determine the permissible range of severity; but within that range, deterrence and other crime-control factors should be looked to.[20]

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[14] Oregon Session Laws, 1977, Chapter 372.

[15] General Assembly of Pennsylvania, House Bill No. 953 (Printer's No. 1102), as reported by House Judiciary Committee, Oct. 3, 1977.

[16] Thorsten Sellin and Marvin Wolfgang, "The Measurement of Delinquency" (New York: John Wiley, 1964); Peter H. Rossi, et al., "The Seriousness of Crime: Normative Structure and Individual Differences," 39 "American Sociological Review" 224 (1974). For discussion of some of the philosophical problems of using popular ratings for this purpose, see "Doing Justice," supra note 1, fn at p. 82.

[17] James Q. Wilson, "Thinking About Crime" (New York: Basic Books, 1975), chs. 8 and 10; see also Andrew von Hirsch, "Giving Criminals Their Just Desserts," "Civil Liberties Review" (April/May 1976), pp. 23, 33–4.

[18] National Academy of Sciences—National Research Council, "Report of the Panel on Deterrent and Incapacitative Effects" (Draft, 1976).

[19] James Q. Wilson, "Thinking About 'Thinking About Crime'," Society (March/April 1977), pp. 10, 20.

[20] Norval Morris, "Punishment, Dessert and Rehabilitation," (Bicentennial Lecture sponsored by the U.S. Department of Justice at University of Denver College of Law, November 12, 1976).

Underlying the debate on such specifics, however, should be a common objective: devising a system of punishments that is more fairly proportioned to the gravity of the crime. The principal defect of the traditional rehabilitatively-oriented penology was its preoccupation with trying to engineer lower crime rates to the exclusion of questions of justice. It is time we recognize that no penal methods, however enlightened or ingenious, are likely to work great changes in our crime rates. We would be wiser to seek the more modest and humane goal of trying to make the penal system a juster—or at least, a less unjust—one.

II. IMPLEMENTATION PROBLEMS

Institutionalizing this new conception presents problems which the Subcommittee should also consider. If there are to be standards for duration of imprisonment, which agency should set them? Which agencies, if any, should be abolished as obsolete? Unwise implementation choices can—and already have in some jurisdictions destroy the usefulness of the changes we have been urging. To illustrate, let me touch upon two such issues: (1) The role of the legislature, and (2) the role of the parole board.

The Role of the legislature.—It has sometimes been assumed that if there are to be standards for punishing criminals, the legislature should set them. California tooke this approach in its new code of determinate sentences—and the results were most unfortunate. Last year, the California Legislature did enact a reasonably coherent code of presumptive sentences—but this year, the code has been overwhelmed with numerous amendments that not only will lengthen sentences greatly but revive much of the wide discretion which the legislation was originally designed to restrict.[31]

The fact is that a legislature—faced with so many other pressing public concerns—has little time and resources to devote to the laborious and technical task of setting penal standards—The fact is also that politics interfere. The public's fear of crime makes it tempting, in a legislative forum, to refer the difficult questions to some other official's discretion, or to adopt unrealistically harsh penalties in order to demonstrate "toughness on crime" to the electorate.

A legislature may delegate its rule-making powers on specialized subject-matters to other agencies—as Congress has done with such regulatory agencies as the S.E.C., F.T.C., F.C.C., etc. This is an area where delegation seems appropriate. The legislature could continue to prescribe maximum permissible penalties and give the standard-setting agency guidance as to the rationale to be followed. But the details of the standards should be developed by a specialized agency which has more time to devote to the task, and which is somewhat freer of political pressures. A variety of agencies could be selected for the task: a new sentencing commission (as the present Federal Criminal Code bill and the Hart-Javits bill propose[32]); a new body whose responsibility is to decide releases from prison (as the A.B.A.'s Committee on the Legal Status of Prisoners has proposed[33]); or else, by the parole board, as the new Oregon statute would do.[34]

Abolish parole?—The Attorney General and Senator Kennedy have recently called for the abolition of parole, and the Federal Criminal Code bill, in the form reported by the Subcommittee on Criminal Laws and Procedures, would create a near-presumption of no parole. The argument made in support of abolition sounds simple and plausible enough: parole was historically based on the rehabilitative penal philosophy; hence if this philosophy is abandoned, so should parole. But matters are actually more complicated.

I have no sympathy with much of the parole board's present practice. There are no standards for release; the release decision is needlessly delayed until well into the offender's sentence;[35] too much emphasis is given to rehabilitative/predictive notions of whether the offender is "ready" for release; and post-release supervision may be largely a waste of money.[56] But these are all matters that could be reformed. The board could be directed to formulate standards for release, and be required to give primary weight to the seriousness of the offense in formulating those standards. The board could be called upon to inform the offender of his release date shortly after he enters prison. And the supervision could be scaled down or even eliminated. In fact, the new Oregon statute would do precisely these things (except for the elimination of supervision.) [57] [58]

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[31] California Session Laws, 1976, Chapter 1139; Phillip Johnson and Sheldon Messinger, "California Determinate Sentencing Statute, History and Issues," paper presented at the Determinate Sentencing Conference, Earl Warren Legal Institute, University of California at Berkeley, June 2, 1977.

[32] Federal Criminal Code bill, 95th Congress, 1st Session, S. 1437 (Committee Print, August 4, 1977); Hart-Javits bill, 95th Congress, 1st Session, S. 204 (January 12, 1977).

[33] American Bar Association, "Tentative Draft of Standards Relating to the Legal Status of Prisoner," 14 "American Criminal Law Review" 377 (1977), Standard No. 9.

[34] Oregon Statutes, supra note 14.

[35] This is no longer true, however, of the United States Parole Commission. It has now established guidelines for its release decisions; and has moved toward informing prisoners early of their expected time of release.

Would it be better to keep parole in this revised form? Or eliminate it entirely? Before opting for its elimination, it is worth considering how parole affects the way time in prison is calculated. There is now a dual system of reckoning time. Judges are accustomed to imposing lengthy sentences of confinement—which the participants in the process do not expect to be carried out; which could not be carried out given the limitations of prison resources; and which would be disproportionately severe were they carried out. The parole board's function—perhaps its most important practical role—is to decide shorter, actual durations of imprisonment. The prisoner who gets a six-year sentence can normally expect to be paroled after two or three.

Were parole abolished, there would be a single reckoning: real time in prison. The judge's sentence would define the period to be actually served. The transition from dual to single time could easily give rise to misunderstanding, however. The appearance of a shift towards leniency can be created, even when there has been no change in the real quantum of punishment. Suppose the practice in a given jurisdiction had been to give first-time armed robbers an average sentence of six years, and parole them, in most cases, after about one-third their sentence had expired. Suppose parole is abolished and a two-year presumptive sentence is prescribed for first offenders convicted of armed robbery. That would involve little actual change in the average stay in prison: it remains at two years. But to those accustomed to hearing sentences expressed in the old manner, it will seem to be a large sentence reduction: two years instead of six![59]

Is such misunderstanding worth risking? Perhaps it might be, with sufficient precautions taken. If a single-time system is established, the agency setting the standards would need a clear directive that it adjust sentence durations downward to reflect the fact that it is dealing with real, not apparent time. The Hart-Javits bill, which eliminates parole and creates a sentencing commission to set the standards, would accomplish this by setting strict limits on the amount of actual confinement which the commission is permitted to prescribe. The bill expressly requires that the commission's standards make sparing use of durations in excess of five years.[60]

Without such precautions, a shift to single time could lead to a large escalation of sentences. This is a major defect of the Federal Criminal Code bill's present provisions. The bill calls upon the sentencing commission to prescribe "real time" sentences that are not parolable. Yet it contains no clear requirement that the commission reduce sentence durations downward to reflect the fact that it is dealing with real rather than apparent time. And the statutory maximum sentences prescribed in the bill are still the very high ones associated with the traditional dual-time system—twelve years for burglary, six years for auto theft, and so forth.[23] The dangers are evident. I very much hope that—as this important legislation continues through Congress—these needless risks will be eliminated.

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[56] See, e.g., David T. Stanley, "Prisoners Among Us: The Problem of Parole" (Washington, D.C.: The Brookings Institution, 1976).

[57] Oregon Statutes, supra note 14.

[58] The new law requires the parole board, after consulting a joint advisory commission of judges and parole officials, to set standards for its release decisions—(in its language) to prescribe "ranges of duration of imprisonment to be served for felony offenses prior to release on parole." The statute prescribes a desert-oriented rationale which the board must follow in setting those standards, as follows:

"§ 2 * * * (2) The ranges [of duration of imprisonment prescribed by the board] shall be designed to achieve the following objectives:

"(a) Punishment which is commensurate with the seriousness of the prisoner's criminal conduct; and

"(b) To the extent not inconsistent with paragraph (a) of this subsection:

"(A) The deterrence of criminal conduct; and

"(B) The protection of the public from further crimes by the defendant.

"(3) The ranges, in achieving the purposes set forth in subsection (2) of this section, shall give primary weight to the seriousness of the prisoner's present offense and his criminal history."

The board is required to inform the offender early of his release date and that date can later be changed only for "serious misconduct" in prison.

[59] This argument will be elaborated in my forthcoming report on alternatives to parole, supra note 2.

[60] Hart-Javits bill, supra note 22, sec. 8.

BIOGRAPHICAL STATEMENT

Andrew von Hirsch is associate professor at the Graduate School of Criminal Justice, Rutgers University, in Newark, New Jersey. He is also Senior Research Associate at the Center for Policy Research in New York City.

He was principal author of "Doing Justice: The Choice of Punishments," the report of the Committee for the Study of Incarceration, an interdisciplinary study group funded by the Field Foundation and New World Foundation. The report was published by Hill and Wang in 1976.

He is now heading a study on alternatives to parole, funded by the Law Enforcement Assistance Administration, Washington, D.C. The report is expected to be completed in the late fall of 1977.

Mr. von Hirsch was also a member of the Twentieth Century Fund's Task Force on Criminal Sentencing, whose report, "Fair and Certain Punishment," was published recently.

He worked with the Oregon legislature in the drafting of that State's parole reform statute enacted in 1977.

He is a graduate of Harvard College and Harvard Law School. He is a member of the New York Bar, and is 43 years old.

Mr. VON HIRSCH. Let me just summarize some of the points that I try to make in the statement.

First of all, as to rehabilitation.

I think one of the things that is really quite extraordinary is the change in official or prevailing thinking on the subject of punishment over the last several years.

When I started writing "Doing Justice," which was in 1971, there was at that time a number of studies suggesting that perhaps rehabilitation didn't work as well as it should; but there was still a very, very strong belief that the ideal way to dispose of convicted criminals was to sentence them according to their needs for treatment.

It was still thought that if there were problems, they were problems of finding effective methods. And I think we've gone beyond that now.

I think that we are beginning to see that there are more problems to the traditional ideal of rehabilitation as it applies to punishment than simply the question of whether it works.

I note that Professor Wilkes will be testifying after I will. She has been involved in a number of studies on the effectiveness of programs.

The impressions I have of what they show—not that nothing works—but that not many programs are effective. Where they are effective, it is for small groups of offenders. Above all, the whole technology of rehabilitation is still at a primitive enough stage where it is very hard to use it as a guide in deciding how much somebody should be punished.

But there's another side of the rehabilitative ideology that interests and disturbs me. It is the question of fairness.

Is it fair, or just, to take somebody who has been convicted of a crime and decide whether he's going to be imprisoned, or how long he's going to be imprisoned, on the basis of what somebody thinks are his needs for treatment.

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[23] Federal Criminal Code bill, supra note 22, secs. 994, 2301, 3831. For my criticisms of an earlier version of the same bill, see my testimony before the Senate Criminal Laws and Procedures Subcommittee, June 9, 1977.

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STATEMENT OF DR. DAVID FOGEL, PROFESSOR OF CRIMINAL JUSTICE, UNIVERSITY OF ILLINOIS, CHICAGO CIRCLE, CHICAGO, ILL.

Prepared Statement of Dr. David Fogel

THE JUSTICE PERSPECTIVE IN CORRECTIONS

There are few enthusiasts left in prisons. The preachers and teachers and treaters have not produced a pay-off to equal their rhetoric. The prisoner-as-plaintiff now looks increasingly to the courts. But not much may be expected in the way of enduring correctional change through the drama of litigation where the central actors are reluctant judges and resistant prison administrators. In any case ". . . prison reform cannot be made acceptable just by ensuring rights or the comfort of the inmates."(*1*)

On the dim horizon one sees a group of the newest enthusiasts clamoring for their place in the torturously convoluted history of prisons. They are called behavior modifiers. Though not new, their language isn't well-known yet because they are just now emerging from animal laboratories and back wards of hospitals for defectives. Their therapeutic arsenal is equipped with positive and negative reinforcements, pills, chemicals, electrodes and neurosurgical instruments. With corrections experiencing an "end of ideology" and its weary leadership floating in a vacuum this new wave of enthusiasm based upon behavior manipulation may become attractive to them. What follows here is an alternative less enthusiastic perhaps but even less manipulative.

Corrections is much too important an issue to be left in the hands of wardens, Clemenceau might have said. But unfortunately that is a fair picture of current American correctional practice which is still insulated and isolated. As a result it remains uninformed by a theory of human behavior hence it may be found to be using several simultaneously. It remains uninformed by a theory of the purpose of the criminal law hence it passively watches itself become an explosive warehouse in response to legislative whim and caprice. Correctional objectives, such as they are, developed aimlessly. Tappan observed (1951).

> "* * * In different periods of social evolution certain ones have emerged out of society's particular climate of values and have been more highly prized than others. Yet each, as it has been crystallised in law, custom, and correctional practice, has impressed a persisting influence upon subsequent policy. Moreover, each objective has become encrusted with layers of rationalization to justify and perpetuate the established treatment methods. The ultimate consequence is a melange of purposes, some deeply bedded in the channels of history * * * it is not unusual to find correction exerting, in turn, vindictive, deterrent, and rehabilitative measures in relation to the same offender."(*2*)

As a result of aimlessness and public neglect the prison never acquired a specific correctional purpose, rather it inherited vestiges of the Puritan Ethic and added middle-class values of mobility through work and education to it. Packer (1968) called this a "leap of faith."

"We can use our prisons to educate the illiterate, to teach men a useful trade, and to accomplish similar benevolent purposes. The plain disheartening fact is that we have very little reason to suppose that there is a general connection between these measures and the prevention of future criminal behavior. What is involved primarily is a leap of faith, by which we suppose that people who have certain social advantages will be less likely to commit certain kinds of crimes. It is hard to make a good argument for restraining a man of his liberty on the assumption that this connection will be operative in his case. It is harder still if he already possesses the advantages that we assume will make people less likely to offend."(*3*)

We will propose a limited set of objectives for prisons devolved from a series of propositions concerning our view of man and law in the context of justice. Meaningful prison objectives cannot be successfully divorced from a conception of human behavior and the criminal law.

Much of criminologic theory development has taken us down a primrose path searching for a "unified theory" of criminality. It has been in the tradition of early demonology, albeit seeking more "scientific" unifying themes such as physique, mental aberrations, glandular dysfunction, genetic disabilities, atavistic behavior, social ecology, cyclic variation in the economy or weather, and associational patterns. Theories have tried "* * * to explain criminal behavior itself, but they do not concern themselves with *why* certain acts are defined as crimes" sometimes oblivious to the interconnectedness of "the acts [themselves] defined in the law as crimes and the forces that impel some people to commit these acts."*(4)* In either case the notion of responsibility is frequently downgraded. Corrections, if not criminology must come to terms with this problem. We can no longer await the refinement of theories before acting to modernize the field. Theorists unlike convicts are not quite so desperate but like them have plenty of time. Correctional administrators are not at such leisure.

We are not sure whether the sentence of imprisonment or any other penal sanction really deters (generally or specifically) but we are in agreement with Norval Morris and Gordon Hawkins when they observed of this endless debate, that it seems to have deteriorated since the days of Beccaria "* * * Discussions of this ancient antinomy which have consumed gallons of jurisprudential ink turn out on examination to resemble nothing so much as boxing matches between blindfolded contestants."*(5)* However, we do have a substantial guide for future correctional action from work of Walker and Wilkins (cited in Chapter II).

We propose the following propositions based upon a perspective suggested by Stephen Schafer:

1. Criminal Law is the "command of the sovereign."[1]
2. The threat of punishment is necessary to implement the law.
3. The powerful manipulate the chief motivators of human behavior—fear and hope—through rewards and punishments to retain power.
4. Socialization (the manipulation of fear and hope through rewards and punishments) of individuals, however imperfect, occurs in response to the commands and expectations of the ruling social-political power.
5. Criminal law protects the dominant prescribed morality (a system of rules said to be in the common and best interest of all) reflecting the enforcement aspect "of the failure of socialization."[2]
6. In the absence of an absolute system of justice or a "natural law," no accurate etiological theory of crime is possible nor is the definition of crime itself stable.
7. Although free will may not exist perfectly the criminal law is largely based upon its presumed vitality and forms the only foundation for penal sanctions.
8. A prison sentence represents a punishment sanctioned by a legislature and meted out through the official legal system within a process of justice, against a person adjudged responsible for his behavior although the purpose of punishment may be deterrence it is specifically the deprivation of liberty for a fixed period of time.[3]
9. The entire process of the criminal law must be played out in a milieu of justice. Justice-as-fairness represents the superordinate goal of all agencies of the criminal law.
10. When corrections become mired in the dismal swamp of preaching, exhorting, and treating ("resocialization") it becomes dysfunctional as an agency of justice. Correctional agencies should engage prisoners as the law otherwise dictates—as responsible, volitional and aspiring human beings.
11. Justice-as-fairness is not a program; it is a process which insists that the prisons (and all agencies of the criminal law) perform their assigned tasks

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[1] And as Schafer reminds this "may be a gloomy truth whether the origin of the law is traditional or revolutionary". (Stephen Schafer *The Political Criminal*, p. 47).

[2] Schafer states "Morality is not the product of law; the law exists to enforce morality" (p. 104) and ". . . criminal law is a kind of back-up instrument in the socialization process, and it comes into operation whenever the state of any moral issue so warrants." (Stephen Schafer *The Political Criminal* p. 84)

[3] "* * * if punishment is to be considered as aim of imprisonment, it must be what the Germans termed "Zweckstrafe," or punishment for a purpose, rather than "Vergeltungsstrafe," or punishment as retribution." A.C.A. "Manual of Correctional Standards" as cited in Killinger and Cromwell *Penology*, p. 76).

with non law-abiders lawfully and with an even hand. No more should be expected, no less should be tolerated by correctional administrators.

12. William Pitt said: "where the law ends tyranny begins"—so does the exercise of discretion. Discretion "may mean either beneficence or tyranny, either justice or injustice, either reasonableness or arbitrariness." (*6*) Discretion cannot be eliminated but the justice perspective seeks to narrow, control, and make it reviewable. (7).

Having stated the propositions we now use them as a springboard for examining their rational implementation in correction institutions. Of the major areas in correctional administration which most vitally affect the operation of prisons three will be discussed; sentencing and parole boards taken together and prison administration. We are interested in how the prison stay is determined, organized, and for most prisoners, ended. Following this analysis we will propose some alternatives. But in preface some thoughts on justice are offered.

On Justice—A Perspective

Philosopher John Rawls identifies justice as "the first virtue of social institutions, as truth is of systems of thought" and he continues, "A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust."(*8*) In order to develop an operational model of justice in corrections we must move from the philosopher's chair to cell block. Speaking about the student of ethics Han Reichenback suggested "* * * [he] should not go to the philosopher, he should go where the moral issues are fought out."(*9*)

A concept of justice is useful to the scholar but it does not contain the urgency felt by those who must daily test its utility in practice. Great ideas are played out by average men not, as Edmund Cahn reminds us, by the legally constructed "reasonable man" who is usually too dull to get into trouble with officials. (*10*)

Justice in the Consumer Perspective

We are not interested in "utopian diagrams about abstract justice . . . justice fill mean . . . the active process of remedying or preventing what would arouse the 'sense of injustice' (*11*) so wrote Edmund Cahn.

The correctional model of justice we arrive at is an adaptation of Cahn's "consumer perspective." It focuses the official processor of justice on the consumer—on the people caught in the machinery of the agencies of justice—the offender, the guard, the victim, the witness and the taxpayer. Tappan (1951) had long ago called this to our attention when he called for the protection of the innocent against injustice; "Three groups require some special consideration. In order of their numbers, they are the taxpayer who bears the costs, the actual or potential victim of the criminal who is most directly injured, and the innocent suspect who may be unjustly convicted and punished." (*12*) In relation to the "War on Poverty" Cahn's son Edgar and his wife Jean called our approach the "civilian perspective" rather than the "military perspective." (*13*) Jonathan Caspar in criminal justice identifies it as the "consumers perspective" (*14*) similarly it is what Philip Selznick refers to when he speaks of the imprisoned in need of "justice as therapy." (*15*) It is a concern for the micro-world of the participants in action not in abstraction.[4]

The "consumer perspective" or "justice perspective" as we shall now refer to it can be distinguished from the "imperial" or "official" perspective. (Cahn, 1963)

"The official perspective has a typical rhetoric which, when expertly manipulated, can seem very persuasive. . . . Some of the familiar phrases are: the public interest in getting things finally settled; the duty to abide by established principles and precedents; the necessity of showing respect for expert judgment and administrative convenience; the dominant need for certainty in the law; the obligation to preserve the law's predictability so that men will know how to order their affairs; the danger of opening the floodgates of litigation; the danger of opening the gates of penitentiaries; the danger of inviting collusion, fraud.

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[4] There is a parallel stream of thought encompassed in Lawrence Kohlberg's *Just Community* (two volumes Harvard University School of Education) but in the last analysis it turns out to be a form of group therapy using morality as its rationale rather than the psyche. At times the two are indistinguishable. Niantic Women's Prison in Connecticut is the current setting for Kohlberg's (et al) correctional demonstration project.

and perjury; the deference due to other organs of government; the absurdity of heeding mere speculations; the necessity of leaving certain wrongs, however grievous they may be, to the province of morals; the paramount need to maintain strict procedural regularity; and (by way of solace to a man on his way to the electric chair) the undeniable right to petition for executive clemency." (*16*)

The justice perspective involves a shift of focus from the processor to the consumer.

"* * * but among the various consumers and their diverse interests, it offers no simplistic formula, no a priori preference, no lazy hierarchy of values. Some consumers need bread; others need Shakespeare; others need their rightful place in the national society—what they all need is processors of law who will consider the people's needs more significant than administrative convenience. . . .

"In the consumer perspective, there is something repulsive about the complacent grin with which we are assured that not many judges have been caught taking bribes, that the third degree is not so common as it used to be, and that not many prosecutors suppress evidence favorable to the defense or, if they do, it is seldom proved. [or that uncovering convicts' corpses embarrasses legislators and thereby retards correctional reform.]

"How can one expect to solace them by promising that some day the law will awake to the needs like theirs? Unless a litigant happens to be an Olympian philosopher or a legal historian, he probably desires justice here and now * * * What he cannot understand is inertia and smug indifference." (*17*)

Corrections has long been cut off from ties with the general field of public administration. Speaking of the courts but with equal validity in corrections, Judge Marvin Frankel states: "One need not be a revolutionist or an enemy of the judiciary to predict that untrained, untested, unsupervised men armed with great power will perpetuate abuse." (*18*) Low visibility and high discretion eventually corrupts. An unhealthy wall of absolute power has kept correctional administrators cut off from; the mainstream of the history of ideas, the spirit of open political conflict (other than those of parochial localisms), their constituencies and from general involvement in the public arena. Wardens have long resisted public accountability (Kadish, 1962)

"* * * [t]he common demand twenty-five years ago for freedom of the administrator to get on with his job free of the harassment of legal imperatives is the same demand made today by those who administer the new penology. A beginning in the correctional area awaits a general recognition that the correctional agency is not *sui generis*, but another administrative agency which requires its own administrative law if it is to make its maximum contributions harmoniously with the values of the general social order in which it functions." (*19*)

The usual correctional response has been that large dosages of discretion are necessary if correctional administrators are expected to treat (rehabilitate) criminals. But we have also been warned by Justice Brandeis: "Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficient." (*20*) George Bernard Shaw, speaking of the ruthlessness of the pure heart said: "Malice and fear are narrow things, and carry with them a thousand inhibitions and terrors and scruples. A heart and brain purified of them gain an enormous freedom * * * "presumably to do anything in the name of benevolence. (*21*)

"There is growing recognition that correctional agencies exercise a very significant form of governmental power, even more important to the lives of individuals than most governmental agencies * * * there is also need to do so in ways that are just and that inspire in the offender, as far as possible, and in the community a confidence in the justice of the correctional process * * * But the most important question is whether corrections should actively be concerned with the fairness of its processes beyond conforming to legal standards and participating in the creation of new ones. Legislative and judicial standards for the conduct of administrative agencies are necessarily minimum standards * * * Reliance must be placed upon the administrative agency itself to achieve that goal." (*22*) (Dawson, 1969)

As a matter of plain fact, correctional administrators have for too long operated with practical immunity in the backwashes of administrative law adjudication, must not stop when the convicted person is sentenced. (*23*) The police and courts in relation to rights due the accused before and through unmindful that the processes of justice, more strictly observed by the visible justice perspective demands accountability from all processors even the "pure of heart." Properly understood, the justice perspective is not so much concerned with administration of justice as it is with the justice of administration. (24)

We now turn, using the justice perspective to inform our probes into sentencing, parole and life in the prison.

On Sentencing and Parole Granting

Judge Marvin Frankel wrote a book entitled "Criminal Sentences" (1973) which after reading, one can very clearly understand the double entendre intended. It might have been entitled "The Crime of Sentencing" or more charitably "The Lawlessness of Sentencing." It was not, nor is this analysis intended as an attack on judges, rather on a sentencing system which is anomic. With few guidelines and many judges we are effectively, in the area of sentencing, a government of men, not laws. (*25*)

"Experience, and wisdom flowing out of that experience, long ago led to the belief that agents of government should not be vested with power and discretion to define and punish as criminal past conduct which had not been clearly defined as a crime in advance. To this end, at least in part, written laws came into being, marking the boundaries of conduct for which public agents could thereafter impose punishment upon people. In contrast, bad governments either wrote no general rules of conduct at all, leaving that highly important task to the unbridled discretion of government agents at the moment of trial, or sometimes, history tells us, wrote their laws in an unknown tongue so that people could not understand them or else placed their written laws at such inaccessible spots that people could not read them." *Ginzburg* v. *United States*. 383 U.S. 463, 477 (1966) (*26*)

It is of vital interest to administrators of correctional agencies that the people committed to them, because of the usual bitterness they have upon arrival, also have the feeling that the judicial process immediately undergone was fair, just, and that the sentence received was offense-related and appropriate. (27) This is largely not the case at present.

Sentencing Patterns. The nation has several different adult sentencing schemes; (1) a system of both maximum (MA) and minimum (MI) terms fixed by the court (each offense has its own upper and lower limits set by law) (2) Both MA and MI (within limits) fixed by court with the MI not to exceed a portion of the MA. (3) MA (within limits set by law) fixed by court and the MI fixed by law (4) MA fixed by law and MI by court (5) MA and MI fixed by law for each offense (6) MA fixed by law but no MA in law rather the MA is fixed by the parole board (7) MA fixed by court, no MI (8) MI is fixed by law and MA by parole board. (*28*)

In addition to this crazy-quilt system in the nation, there are sentencing disparities within the same jurisdiction. It is too facile to permit the disparities to be explained as individualized justice being meted out by different judges.[5] Absent sentencing criteria, the individual judge's attitude surfaces as the controlling force. Like others, judges have strong attitudes about sex, mugging, narcotics and other crimes. The difference in the case of judges is that their attitudes, translated into unbridled action produce the longest prison terms in the western world. Blacks are treated more severely [6] by prison sentences than their white counterparts for similar crimes. (*29*) But race is not the only problem as James Bennett has observed—

"In one of our institutions, a middle-aged credit union treasurer is serving 117 days for embezzling $24,000 in order to cover his gambling debts. On the other hand, another middle-aged embezzler with a fine family is serving 20 years, with 5 years probation to follow. At the same institution is a war veteran, a 39-year-old attorney who has never been in trouble before, serving 11 years for illegally importing parrots into this country. Another who is destined for the same institution is a middle-aged tax accountant who on tax fraud charges received 31 years and 31 days in consecutive sentences. In stark contrast, at the same institution last year, an unstable young man served out his 98-day sentence for armed robbery." (*30*)

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[5] Richard McGee calls our attention to the fact that the "hanging judge" and "soft headed judge" (disparities within a jurisdiction) is largely the same product of rulelessness sentencing systems ("A New Look at Sentencing—Part II" *Federal Probation*, September 1974, unpublished manuscript, p. 7.)

[6] Blacks, in the Federal system in 1969 and 1970 were averaging 88.5 months compared to whites at 75.1 months. *Federal Bureau of Prison Statistical Report* 1969 and 1970 (table A-3A).

Indeterminate sentences, said to be a treatment tool, have without exception produced more severe prisons terms. (*31*)

"70 percent of definite sentence prisoners actually serve two years or less; whereas only 57 percent of the indeterminate sentence prisoners actually serve two years or less * * * Clearly, therefore, in practice the indeterminate sentence system serves to keep a substantially greater proportion of men in prison for long terms than the definite sentence system." (*32*) (Rubin, 1978)

The sentencing procedure itself, which presumably represents the apex of the adjudication process (up to this point justice was largely procedural) where the sovereign now "restores the balance" by meting out justice, is largely lawless. Legislatively prescribed procedures are practically non-existent. Regardless of what the judge finally selects as a sentence, the process itself, with rare exception, is inscrutable. We don't know, because we do not require an explication of sentence selection norms what a judge considers in his selection. "We do not allow each judge to make up the law for himself on other questions. We should not allow it with respect to sentencing," said Judge Frankel. (*33*) Continuing he points out:

"In deciding where to fix any particular sentence, he will presumably consider a host of factors in the case: the relative seriousness of the particular offense—the degree of danger threatened, cruelty, premeditation; the prior record of the defendant; situational factors—health, family disturbance, drug use; the defendant's work history, skills, potential; etc. In the existing mode * * * the judge is under no pressure—and is without guidelines—toward systematic, exhaustive, detailed appraisal of such things one by one. He probably does not list them even for himself." (*34*)

Even if he did list them it would be unknowable since he have not developed a procedure mandating judges to do so. Even when judges are thoughtful, the information they have before them, upon which to gase a consideration, is frequently inadequate, of a bland generalized nature and * * * "is not mitigated by the appending diagnostic courts and summaries that are sometimes legible, and less often intelligible, to the sentencing judge. (*35*) Finally, whatever the sentencing process is, it is not adversary and is rarely reviewable.

One would think that with such unbridled and unassailable power the judge's sentence would indeed be carried out to the letter. That used to be true but no longer is.

"The correlation between courtroom pronouncement and actual outcome has virtually disappeared. The history of penal policy during this interval is in no small measure one of erosion of judicial power and the evolution of a highly complex process of administrative punishment-fixing that directly involves prosecutors, parole boards and the disciplinary committees * * * From this functional perspective, judges are doing less and less of the real decision-making, their role being merely one step in a process in which law enforcement, prosecutors, probation officers, parole boards, parole agents or correctional staff may play major roles." (*36*) (Caleb Foote, 1972)

In the process of erosion, district attorneys at the front end of the criminal justice system, using their bargaining power make more decisions concerning the sentence than do judges. And at the other end of the system, the parole board governs the outside length of the sentence.[7] The prisoner * * * "Kept in the dark about how to behave" in order to minimize his sentence finds his life in the prison cast in a "pattern of cryptic taciturnity." (*37*)

Parole boards, without a legal mandate to sentence continue to play a larger role than judges in sentencing. Caleb Foote (1972) comments on parole board decision making:

"The same basic criteria are usually employed whether the arena is a courtroom or some prison parole hearing room, e.g.: (1) a determination of how much time is right for the kind of crime at issue, with the decision-maker's own sense of values and expectations usually (but not always) heavily influenced by the pressures of his environment and what he perceives to be the norms of his colleagues; (2) classification within that crime category of the offender's particular act as mitigated, average or aggravated; (3) his past criminal record (slight, average or aggravated): (4) the extent of his repentence, his attitude towards available 'treatment', and the official prognosis of his reformability; or (5) the anticipated public (usually meaning law enforcement) reaction to a proposed disposition."(*38*)

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[7] When you think about it, parole boards really have more to say about how long a person's liberty must be taken away from him than the courts do." (Maurice Sigler, Chairman of the U.S. Parole Board *The Courts and Corrections* Speech 8/17/75, Kirksville, Mo.).

Parole boards, through legislation, have inherited much of the sentencing power normally associated with the judiciary.(*39*)

The parole board decisions too are unreviewable and are not hammered out in an adversary clash, rather they are five to fifteen minute sessions frequently with members using a combination of whim, caprice and arbitrariness. And as if to say amen, Maurice Sigler of the U. S. Parole Board, following *Morressey* v. *Brewer* said in a speech (1973) "* * * perhaps it should have been foreseen that eventually parole actions would have to be governed by considerations of due process."[8](*40*)

Compared to the courtroom which is open, the parole board hearing is secret. Only recently have reasons for denial been given to convicts in a systematic manner, but decisions, short of a finding of abuse of discretion, are not successfully appealed. (*41*)

We find vague the rhetoric of the imperial or official perspective guiding judges and parole boards in their decisions. The justice perspective challenges the lack of clarity and degree of certainty of such expressions as: "the sound exercise of judicial discretion," "the consideration of the crime and the criminal," "the gravity of the deed," "the guilt of perpetrator." (*42*) They are, Caleb Foote points out, no more than slogans, none are law.(*43*) In the quest for fairness using the justice perspective we seek a justification in the law for the decisions of those who exercise wide discretion. "The largely unbridled power of judges and prison officials stir questions under the clauses promising that life and liberty will not be denied except by 'due process of law'."(*44*) Justice Stewart once described some sentencing practices as discriminatory, capricious and freakish.(*45*)

We have made this brief excursion in the realm of ruleless sentencing and parole granting not for the purpose of extensive analysis rather to better understand the prisoner as he enters and tries to legally leave the prison. Prison life is largely a product of the anomia of sentencing and paroling. Like both, it too is effectively ruleless. How could it be otherwise with 95% of its prisoners unable to calculate when they will be released or even what, with a degree of certainty, is demanded of them for release candidacy by parole authorities. These two processes, uncontrollable by prison officials, have crucial impact on life inside the walls, to which we now turn.

A Restatement of the Purpose of Prison

At one level the problem with prisons is that they have never bitten off a digestable bite. A narrowing of the rhetoric and purpose is necessary. A prisoner who entered with feelings of despair, after having received a sentence he felt improper but unreviewable, now has to settle down to life in a cage. First he must turn his attention to problems of protecting his internal integrity from another sequence of largely lawless events—prison life. This would be a herculean task for most but additionally he learns that still another lawless (in the sense of ruleless) process needs to be undertaken—his preparation for parole. As a stranger in a zoo-like world he begins to seek out significant others who can speed his process of release. But who can make such judgments in a prison? What appears to be a rational, even tightly drawn military-like prison staff organization is, upon closer examination, chaotic.[9] Again the question turns on discretion.

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[8] "The U.S. Board of Parole is opening five regional offices to expedite parole actions and insure that decisions are considered in a manner that provides greater fairness to inmates and to the public. Prisoners will be told why paroles are denied and may appeal the decision to the full Board in Washington, D.C. Regional offices are being opened in Philadelphia, Atlanta, Kansas City, Mo.; Dallas, Tex.; and Burlingame, California." (LEAA Newsletter, August & September, 1974, p. 26.)

[9] Seen from outside, the criminal justice and correctional system presents the appearance of a virtually omnipotent conspiracy for the organisation of human misery. But once having won his way in, the outsider—now a participant—discovers a shocking fact. Except for the universal penchant of bureaucrats to cover their own trails, there is no conspiracy. Indeed, there is hardly any 'organisation'. What appeared at a distance to be a monolithic system turns out to be no system at all—but rather a concatination of several interest groups, frequently operating at cross purposes or, worse, without reference to each other at all. In the chaos thus propagated, accident, apathy, non-accountability and sheer inertia are fully capable of producing fortuitously what the most efficient, concerted malice might have achieved by design: the almost total debasement of human aspiration." (Richard R. Korn, "The Prisoners of Affirmation: Correctional Administrators as Penal Reformers" in *Prisoner's Rights* by Michele Hermann and Marilyn Haft (editors), p. 441.)

Theoretically, the staff of the prison regularly furnishes the parole board with information pointing to prisoner progress, its pace, or absence. Of the myriad events which take place how can discriminating information be sensibly selected, collected, distilled and reported to the board? After the board "studies" it, it now has to make a decision concerning the convict's future crime-free behavior basing it upon his behavior in prison—no small task. Unaided by rules, reviewable findings or precedents the board usually makes its decision using a melange of whim, time served, caprice, the amount of "noise" created by law enforcement agencies, arbitrariness, and authoritative testaments from clinical and other prison staff concerning the convicts reformative progress. It is in this process that prison staff decision making fades into unbridled, low visibility discretion. If at first blush, discretion looks like power, in prison it also produces an arena in which indecisiveness, favoritism, racism, suppression and lawlessness are daily played out. The system calls forth such responses from staff and convicts because it gives no direction, has no accountable mission and in the absence of accountability, claims much more than it can produce.

We have to conceive of the period of incarceration and its place in criminal justice in a new way. Consider the problem facing Thomas Edison when he was thinking about a new technology for developing artificial light. The imagery he labored under at the time was "candle power" and how to increase its potency. Staring at the candle and acting upon that model he would have simply produced larger and larger candles. Edison needed and produced a flight in imagination to arrive to the electric light bulb. In corrections we are still toying with the candle. The suggestions to follow are based upon a two-pronged strategy (1) the immediate and short range and (2) the middle range. No long range is offered because the critical urgency to move rapidly and "progress" in corrections is usually counted in decades. The distinguishing characterstics between the two strategies is that the short range requires no legislation or new appropriations while the middle range requires both.

Immediate and Short Range

We need to conceptualize imprisonment differently and narrow our rhetorical claims. A penal sanction should *only* mean a temporary deprivation of liberty. It is the legal cost for the violation of some laws. The prison is responsible for executing the sentence not rehabilitating the convict.

"In seeking to make criminal justice more redemptive and less punitive, we may have asked too much of institutions that can barely hold their own, let alone develop the competence to be curers of souls. A retreat from rosy hopes may well be inevitable, if only because rehabilitation entails supervision, and ineffective rehabilitation coupled with open-ended control has little to commend it." Selznick (1968) (*46*)

The sentence must be seen as a part of the continuum of justice—it must be experienced justly, reasonably, and constitutionally. It is in the context of justice that a mission arises for the prison and its staff. The mission is fairness. Until sentencing and parole problems can be resolved, discretion must be harnessed by as much voluntary administrative explication of norms as is necessary to produce a sense of fairness for both the keeper and the kept.

The prison sentence should merely represent a deprivation of liberty. All the rights accorded free citizens but consistent with mass living and the execution of a sentence restricting the freedom of movement, should follow a prisoner into prison. The prisoner is volitional and may therefore choose programs for his benefit. The state cannot with any degree of confidence hire one person to rehabilitate another unless the other senses an inadequacy in himself which he wishes to modify through services he himself seeks. This should be evident from historical experience. Volition is subversive of the foundation of the clinical model for the offender exercising independence of choice, may not select the clinician as his choice of treatment. The person troubled or in trouble has to want something to happen. The best way to engage him is to treat him with dignity. Administrators should immediately begin to zero-base budget all such program services not voluntarily chosen by inmates.

"*The postulate of normality, competence, and worth.* If offenders are to be dealt with as human beings, it must be assumed that they are basically like everyone else, only their circumstances are special. Every administrative device that negates this principle, and any therapy that ignores it, must be questioned and, if possible, set aside." (47) (Selznick, 1968)

We will shortly elaborate a prison mission of justice for our current fortress prison environment—but the fortress prison system must be ended if we are to expect further rationality in correctional development.

Middle Range

There are three elements which should govern the middle range strategy which will be elaborated later: (1) a return to flat time sentences with procedural rules governing sentence selection. (2) the elimination of both parole boards and parole agencies; (3) the transformation of the fortress prison into institutions for no more than 300 persons, further divisible into sub-units of 30. The institutions will contain people sentenced to similar terms. Release will be determined by a narrow and reviewable system of fixed good-time rules. We turn first to those elements of a short range which can be immediately implemented by administrators.

A Justice Model for the Fortress Prison

The period of incarceration can be conceptualized as a time in which we try to reorient a prisoner to the lawful use of power. One of the more fruitful ways the prison can teach non-law abiders to be law-abiding is to treat them in a lawful manner. The entire effort of the prison should be seen as an influence attempt based upon operationalizing justice. This is called the "justice model."

It begins by recognizing—not by moralizing what the prison stay is about. Simply stated, it is an enforced deprivation of liberty. It is a taking of some or all of the days of a person's life and his confinement within an area. When men are confined against their will in this country, the bottom line of the arrangement of life for both the keeper and kept should be justice-as-fairness. Opportunities for self-improvement should be offered but not made a condition of freedom.

Confinement and compression of large numbers of men, in a human zoo, who in the past have frequently resorted to the use of force, fraud and violence is at best a precarious venture. James Q. Wilson said, "We have imposed the rehabilitative philosophy in a way that offends simple justice . . . when it is possible for one person, by manipulating the system, to go free while another, convicted of the same crime, remains in prison for a long term." (48) Prison administrators should not now further confuse their staff with a mission either claiming moral or psychologic redemption nor with one which leans on brutality to create orderliness.

Justice-as-fairness provides the keeper and the kept with a rationale and morality for their shared fates in a correctional agency. Considering the failure of most treatment methods within our current operating structure—the fortress prison—the justice model holds some promise, if not to cut recidivism, then to more decisively preclude Atticas. This model purports to turn a prison experience into one which provides opportunities for men to learn to be agents in their own lives, to use legal processes to change their condition, and to wield lawful power. Men who can negotiate their fates do not have to turn to violence as a method of achieving change.

It is a sad irony in our system of criminal justice that we insist on the full majesty of due process for the accused until he is sentenced to a prison and then justice is said to have been served. Consider that our criminal code makes it mandatory that before a criminal sanction may be imposed, there be a finding beyond stringent levels of doubt that the accused's behavior was a union of *act* and *intent*—it was volitional. We will reduce degrees of responsibility for the alleged crimes if the behavior was adjudged non-volitional. We are tough in standards of arrest, most stringent in the finding of guilt. The defendant is protected under the mantle of the presumption of innocence. The state must prove its allegations "beyond a reasonable doubt." The defendant can stand mute in court and is protected from conviction out of his own mouth. Anything brought before the court to support a prosecutor's claim may be challenged. We believe that this system is civilized and protects us from star-chamber injustices. We strain to protect the lowliest from the capriciousness of the legally constituted authority. The great irony occurs after a conviction when the judge commits a guilty offender to prison. It takes a great flight of imagination or studied neglect to include the current prison experience in a system of justice. The entire case for a justice model rests upon the need to continue to engage the person in the quest for justice as he moves on the continum from defendant-to-convict-to-free citizen.

The justice model seeks to engage both the keeper and the kept in a joint venture which insists that the agencies of justice shall operate in a lawful and just manner. It simply means that we believe that the prisoners did not use lawful means to guide themselves outside the prison and should therefore be provided greater (not lesser) opportunities to learn lawful behavior while in the institution. The staff effort should be turned to teaching a prisoner how to use lawful processes to achieve his ends. This also implies that the convict accepts the legal responsibility for the consequences of his behavior. In the absence of a continuum of justice in the prison, most ends are reached unlawfully. When unlawful behavior is detected, it is itself frequently dealt with absent the very standards of due process we insist upon outside the prison. The result is a further indication to the convict that lawful behavior has little pay-off. He can be dealt with arbitrarily and usually responds by treating others in the same manner.

The justice model insists that, at least during the period of incarceration, the prisoner and the staff, as society's agents, will deal with problems in strict fairness—something we expect of each other outside of prison. Further, it points to a way of engaging both the keeper and kept in a rhetoric-free manageable prison experience.

OPERATIONALIZING JUSTICE IN THE PRISON

The model of justice we propose affects several aspects of prison life. It attempts to create a lawful and rational arena for dealing with problems arising from an artificial environment which charges one group of men to restrain the mobility of another against their wills. While this can probably never be voluntarily achieved there are some immediate short range goals which we believe are realizeable; (1) a mitigation of harshness, (2) peaceful conflict resolution, (3) and a safer staff work environment that will emerge from the operationalization of fairness in prison life.

The days of hiding behind the wall are effectively over. Correctional administrators can undergo the turmoil of being forced to go public or can take the initiative and voluntarily begin programs of playing a more open hand. By this we mean a checks and balance system of scrutiny not another torrent of slick publications. For those who believe that such a course of action is a new or radical departure in thinking we cite John Howard in his "State of Prisons," 1777.

"Finally, the care of a prison is too important to be left wholly to a gaoler, paid indeed for his attendance, but often tempted by his passions, or interest, to fail in his duty. For every prison there should be an inspector appointed; either by his colleagues in the magistracy or by Parliament * * * He should speak with every prisoner, hear all complaints, and immediately correct what he finds manifestly wrong." (*49*)

Discretion is the central problem of corrections affecting its entire structure from the administrator to the convict. Its successful harnessing could go a long way toward giving the feeling of fairness to all concerned. More significantly perhaps it would free the administrator from bondage in the rhetoric of the imperial perspective and permit him to take a position more suitably appropriate for an agent of justice. In this sense freedom for the correctional administrator lies in the direction of voluntarily adopting a simple justice mode for administering his official affairs. How may this be done? Professor Kenneth Culp Davis suggests several ways of structuring discretion.

"The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents, and fair informal procedure. The reason for repeating the word 'open' is a powerful one; Openness is the natural enemy of arbitrariness and a natural ally in the fight against injustice." (*50*)

Properly understood this discussion is limited to the elimination of unnecessary discretion and the structuring of arbitrary discretion. It does not imply the total elimination of discretion rather a lifting of the veil so that fairness can creep in to protect those affected. We all respond more positively to fair treatment and even to a punitive action when it is accompanied by a precise explanation of a violated norm.

In the context of prison, justice-as-fairness means having clear rules, insuring their promulgation, and a procedure for determining and punishing rule infractions rooted in due process safeguards (for example: statement of the allegation, notice, counsel substitute, a hearing, the chance to rebut, written findings, appeal).

Further, it means giving up the foot dragging which the litigation so vividly bares. Correctional administrators should not have to be brought to court to provide adequate law libraries and access to them, for more than ten sheets of paper or for punishing by segregation, those who use their right to access the court, the press or the public. A justice perspective assures that expressions of racism will be fought. We should be in the forefront of exposing the indignities of poor medical care, inadequate diets, servile labor, the absence of recreational programs and inhumane segregative facilities. The case materials show that in court we appear to be alibiing for the existence of such conditions instead of agreeing to seek remediation. The public and court will permit us reasonable precautions about what may freely enter prisons, but they look askance at the overbroad prison regulations surrounding mail, publication, and visitors. Administrators need to make a dramatic break with the vestiges of the nineteenth century "buried-from-the-world" philosophy. Courts should not have to force modern administrators to adopt any of the above procedures—it embarrasses our claims to professionalism.

Specifically, but not exhaustively, the following program elements would provide minimal levels for a justice perspective in prison operation.

1. Elements of self-governance.
2. A system-wide ombudsman independent of the Department of Corrections.
3. A law library.
4. Civil legal assistance for inmates.
5. A prevailing-rate wage system in the prison industries.
6. Opportunity to provide community service (a form of more restitution).
7. Recognition of, and opportunity for programing for different ethnic groups.
8. Due procedural safeguards built into internal behavior management systems.
9. No mail censorship.
10. An extensive furlough program.
11. A greater degree of certainty about the length of the prison stay.
12. Open access of the correctional system to the press.
13. A system of victim compensation and offender restitution.
14. Conflict resolution machinery built into the prison operation.

An agenda for fairness for guards should include: clearly drawn work assignments, employment standards and salary on par with the state police, hazardous duty and malpractice liability insurance, a dignified but mandatory earlier (age 55) retirement, special benefits from duty-related death, the right to organize and bargain collectively, involvement in program planning, a grievance procedure, freedom from partisan political pressures, merit[10] procedures for promotion, and mandatory training which is unambiguous about the guards' work role and focuses on procedures of justice-as-fairness in addition to traditional custodial concerns.

In the micro-world of the prison the justice perspective calls upon the maker of rules to share legitimate power with the enforcers and consumers of the rules. It also urges that all rules and rulings be required to stand the test of being the least onerous way of reaching a lawful end.

Sentencing and Parole—Some Alternatives

We have already examined the maze of sentencing patterns which exist in the nation. We have an idea of the disparities which arise as a result of lawlessness in sentencing procedures. In the area of sentencing we are a government of men not law. Prisoners entering our institutions burdened with a sense of injustice, living in its compressed tension, with ruleless procedures for parole, make the entire prison venture unsafe for all. Yet we will need some form of separation of the dangerous for the foreseeable future. But sentencing can be accomplished sensibly and equitably.

The indeterminate sentence is now experiencing the beginning of its end. Recently a group of informed leaders have begun sounding the death knell for the rehabilitation model and its powerful tool the indeterminate sentence.[11]

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[10] At Menard prison in 1973 guards talked freely about purchasing and retaining their jobs, and being promoted as a function of routine payments to county party chairmen, ranging from $50.00 to $300.

[11] "Now both the public and the correctional staff expect prisoners to be, at least, no worse for the correctional experience and, at most, prepared to take their places in society without further involvement with the law." (National Advisory Commission on Criminal Justice Standards and Goals, 1973.)

Judge Laurence W. Pierce (U.S. District Court) states in relation to the rehabilitation model: "I join the chorus of those who are suggesting that this commitment be reassessed. (*51*) Judge Frankel finds the indeterminate sentence is frequently "evil and unwarranted." (*52*) Judge Constance Baker Motley has suggested a system of graduated sentences of a mandatory nature for the repetitive offender but no prison for most first offenders. (*53*) Dr. William E. Amos Chairman of the Youth Corrections Division of the U.S. Board of Parole took the following position:

(1) We should confine fewer people.

(2) The philosophy of confinement should be deterrence, accountability, and the protection of society—not rehabilitation.

(3) Adequate training or rehabilitation centers should be operated by other agencies to service those offenders whose offenses are directly related to educational, physical, or psychological deficiencies. These agencies may be vocational rehabilitation, welfare, educational, or even private agencies.

(4) Whenever a person is confined he should be provided the protection, services, and opportunities that would reflect our belief in the dignity and nature of man. I would further propose that a National Inmate Bill of Rights be prepared, and all states be urged to adopt and implement it. (*54*)

Allen Breed, Director of the California Youth Authority has come to the position that our "goal may (have) to be to make rehabilitation fit the crime." (*55*)

"But we should not confuse the public or ourselves on what we are doing. If we send offenders to prison we do so to punish them, not to rehabilitate them. Hopefully, we can carry out our punishment in humane and sensible ways—and long sentences for offenders who are not dangerous can hardly be called sensible.

"The method would vary with the offender. Dangerous offenders must be kept in secure institutions—for the protection of society—for this must remain our primary consideration. The vast bulk of offenders need not be incarcerated at all, or for as short a time as possible, and always for periods that are specified in advance." (*56*)

The AFSC Task Force also called for the reduction of discretion in sentencing and an end to reliance on rehabilitation as a goal in corrections. (*57*) Richard A. McGee, president of the American Justice Institute, and perhaps the nation's most prestigious correctional figure, has after over 40 years of practice concluded:

"The divergence of views with respect to the purposes of criminal justice administration on the part of police, courts, corrections, legislature, significant citizen groups, politicians and the communication media give rise to a total picture of confusion, capriciousness, and injustice, if not irrationality. A system needs to be devised and put into operation which will (a) protect the public, (b) preserve the rights of individuals, and (c) satisfy reasonable men that it is fair, consistent, intelligent, and incorruptible. Such a system must be capable of adapting to the advancement of human knowledge and to the changing social and economic needs of the total society. That such a system of criminal justice does not exist in America today except as unrealized ideal is scarcely open to argument. This void is more apparent in sentence determination than in most other phases of our present 'non-system.' . . . The time for change has come. The question in most jurisdictions now is not do we need change but change to what and how to bring it about. Whether to muddle along responding to unsystematic political sharpshooting or to make fresh plans for orderly legislative enactment—that is the choice. Simple logic dictates the latter course. As a point of departure, this writer after years of frustrating experience and informal consultation with numerous practitioners and students of the problem has devised an alternative sentencing system * * * (*58*)

McGee urges *inter alia* the (1) end of indeterminate sentencing (2) a return to flat time sentencing (3) procedural criteria for sentencing (4) sentencing review procedures (5) and an end for both parole boards and parole[13] itself as a separate entity. (*59*)

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[13] Milton Rector, Executive Director of the NCCD, looking to "Corrections In 1993" also advances the elimination of parole boards and parole. He also suggests the periodic mandatory release of prisoners with assessments of how the prisoners fares on these furloughs as determinative of readiness-for-release decisions (Harleigh B. Trecker, editor Goals for Social Welfare 1973–1993: *An Overview of the Next Two Decades, 1973*)

It is indeed an important chorus, as Judge Pierce noted, but at least eight additional widely respected reports must be added to the chorus seeking sensible sentencing: (1) The National Council on Crime and Delinquency's *Model Sentencing* Act (1972) (2) The American Law Institutes' *Model Penal Code* (1963) (3) The ABA's *Standards Relating to Sentencing Alternatives and Procedures* (1969) and their *Standard Relating to Appellate Review of Sentences* (4) *The National Advisory Commission on Criminal Justice Standards and Goals' Report* (5) *The President's Commission on Law Enforcement and Administration of Justice,* (6) *The New York State Citizens Inquiry on Parole and Criminal Justice* (7) *The Committee for the Study of Incarceration and* (8) *The Group for the Advancement of Corrections', Toward a New Corrections Policy.*[18] All have a common thrust in relation to sentencing best described by the ABA in a commentary "Perhaps no single process or series of processes in the criminal justice system is more chaotic than the act of sentencing." (*60*) Although each report represents a variation on a similar theme—the emergent consensus seems to be:

1. Sentencing criteria should be statutorily required.
2. Sentencing should be based upon classification of offenders into risk categories.
3. Sentences should be more definite, (there are fairly broad variations but indeterminancy is substantially rejected) or fixed and graduated by seriousness of the offense.
4. Sentences should be reviewable.
5. Sentences of imprisonment should be substantially reduced.
6. Sentences of imprisonment should be justified by the state after an exhaustive review fails to yield a satisfactory community-based sanction.

Others have urged Commissions on Sentencing, (*61*) sentencing review councils, (*62*) separate sentencing hearings, (*63*) an end to plea bargaining (because it limits all other sentencing alternatives), (*64*) statutory atuhority for nonincarcerative sentences, (*65*) an end to the capriciously excessive "emergency laws" which periodically panic legislatures, (*66*) for sentencing decisions to be weighted in favor of promoting a concept of individual liberty (*67*) and sentence equalization courts (automatic review). Thorsten Sellin speaking to the historical struggle between the egalitarians and the behavioral scientists observes (1970):

"With the increase of the number and variety of possible dispositions available to the courts the arbitrary power of courts which the egalitarians were desirous of destroying because of their mistrust of these agencies, has been increased, and more and more discretionary power has been transferred to agencies of correctional administration . . . The treatment philosophy has constantly made more inroads, but has not reached the point of diminishing returns." (*68*)

The current and persistent thrust may be fairly characterized as a neo-classical consolidation of penal sanctions. We add the perspective of justice-as-fairness which insists upon tight procedural regularity, hence a narrowing of discretion, for the agencies of the criminal law.

A RETURN TO FLAT TIME

"All this leaves the problem just where it was. The irresponsible humanitarian citizen may indulge his pity and sympathy to his heart's content, knowing that whenever a criminal passes to his doom there, but for the grace of God, goes he; but those who have to govern find that they must either abdicate, and that promptly, or else take on themselves as best they can many of the attributes of God. They must decide what is good and what evil; they must force men to do certain things and refrain from doing certain other things whether individual consciences approve or not; they must resist evil resolutely and continually, possibly and preferably without malice or revenge, but certainly with the effect of disarming it, preventing it, stamping it out and creating public opinion against it. It short, they must do all sorts of things which they are manifestly not ideally fit to do, and, let us hope, do with becoming misgiving, but which must be done, all the same, well or ill, somehow and by somebody.

"If I were to ignore this, everyone who has had any experience of government would throw these pages aside as those of an inexperienced sentimentalist or an Impossibilist Anarchist." (George Bernard Shaw 1922) (*69*)

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[18] Consisting of "Two Declarations of Principles": one by correctional administrators, and a second by the Ex-Prisoners Advisory Group (sponsored and published by The Academy for Contemporary Problems, 1501 Neil Avenue, Columbus, Ohio, 1974).

Richard McGee's alternative for California returns to flat time sentences in a five degree felony plan ranging from a minimum of three months to three years in the 5th degree to seven years to life (and death, if lawful) for 1st degree felonies. Considerable discretion is left to judges (with a built-in appellate review council) and state parole is collapsed into the existing probation system in the county that the released convict is expected to dwell. The prison therefore receives no discretion other than through the residual good time law which is not eliminated. Our suggestion, although closely paralleling McGee's, calls for a total flat sentence for three types of felonies mitigated by substantial good time credit. Both plans return power to the judiciary, within statutory guidelines and eliminate parole boards entirely. McGee observes:

"The judicial system is uniquely equipped to manage the decision making process in accordance with law, if an appropriate system were established to control capriciousness in subjective sentencing judgments. If judges are not social scientists, we must submit that most parole board members are not either and even where some of them are, there is no evidence that their decisions on balance are more wise and appropriate than those of judges." (*70*)

We call for a system based upon a finding of clear and present danger to be necessary for the imposition of a term of imprisonment. Imprisonment should be the court's last available sanction following an affirmative action by authorities seeking other alternatives. When a finding of clear and present danger is made it should require incarceration. At this point we part with McGee, who we believe, leaves too much discretion to the courts (even with the appellate review council, which we support). If we can accomplish procedural regularity in sentencing we believe a system based upon categories of demonstrated risk will bring more certainty and fairness to the prisoner.

But the prison needs one other tool to make prison life more rational. We propose that the limit on the flat time sentence be mitigated only by good time credit. This puts the discretion closer to the source which can most usefully employ it. It simply says to the prisoner (in category B for example):

"Your stay has been determined to be four years, no more, you can get out in two years but that's up to you. We reduce your sentence one day for every day of lawful behavior. You can't get out any faster by making progress in any other aspect of prison life. Lawful behavior is the pay-off. We trade you a day on the streets for every good one inside. For rule infractions, which may lead to a loss of good time, you will be able to defend yourself at a hearing, safeguarded by due process. We publish and issue a list of rules and the penalties for their violation. Our internal court does not deal with any actual crimes you may commit. If we have probable cause to suspect you committed a felony during your term with us it becomes a matter for the local district attorney. This may lead to another prison sentence. The law is such that lost good time, over six months, can be restored by a judge and a thorough appellate court procedure."

The basic idea behind each of the leading sentencing revision plans is a search for the classification of dangerous felons. They presuppose tight sentencing procedures and they propose a variety of ways of accounting for the more dangerous.

Consistent with the neo-classic approach taken in this paper the organization of the justice-for-fairness prison is based upon the principle of maintaining that spark we all seek as validation of manhood (and womanhood)—responsibility. The prison sentence is punishment but its execution is not vengeful. His conviction was based upon his volition and now forms the basis for his treatment as a prisoner. The new prison program can offer a reasonable array of services beyond the food-clothing-medical-shelter needs. We see the need for educational, recreation, conjugal visitation, work and vocational programs.

Education (academic and vocational) in our new prison program is akin to labor. There is no need for a full spectrum of remedial grade, high school and college programs. Prisons rarely have them anyhow. Education should be offered on a contractual basis after a prisoner (or group of prisoners) has selected a program he believes necessary for his own self-improvement. Counseling can also be accomplished in this manner. New programs are simply added and old ones discarded in response to need, not for the purpose of keeping dozens of civil service academicians busy without reference to needs of the prospective student body.

All clinical programs can be dismantled as well. The spectacle of organizing inmates into therapy groups or caseloads is embarrassingly tragic. It is best described as a psychic lock-step. When the indomitability of the human spirit could not be crushed by our "break the spirit" forefathers we relinquished the task to the technology of psychiatry. It is our belief that a conception of the prisoner as volitional and his assumption of responsibility for his behavior provide the best chemistry for mental hygiene. "To punish a man is to treat him as an equal. To be punished *for an offence against rules* is a sane man's right" said W.F.R. Macartney, an English exprisoner. (*71*) If he feels he has an emotional problem for requiring professional assistance the prison should make a timely response by providing a delivery system whereby private therapists are contracted for from the free world. J. D. Mabbott believed that:

"* * * it would be best if all such (clinical) arrangements were made optional for the prisoner, so as to leave him in these cases a freedom of choice which would make it clear that they are not part of his punishment. If it is said that every such reform lessens a man's punishment, I think that is simply muddled thinking which, if it were clear, would be mere brutality." (72)

The central point to be made is that the prisoner chooses and his release is not a function of clinical progress. We wonder, in an atmosphere of real choice, (in the sense of "free enterprise") how many prison clinical programs would survive?

As the Twentieth Century comes to an end the prison must act on the universally accepted axiom that the human animal is basically bisexual and that deprivation of opportunities for its expression, in the best of circumstances, leads to distorted behavior. Dignified, private and extended visitation is a minimal standard in our new scheme. It is not a reward. Like medical and food services it is minimally required for those from whom we expect responsible behavior.

Type B and C custodial facilities are distinguished by degrees of security. Secure custodial architectural treatment can now be accomplished mainly by perimeter defense. When a 300 person facility is sub-divisible into living units of thirty, other advantages arise (1) the oppressive features of large congregate living (counts, group movements, routinization, etc. . .) are eliminated (2) further refinements of classification (by work, education, even treatment groups voluntarily devised) for residence selection are available (3) staff can be assigned to manageable units and have their skills matched to the needs of the prisoners they supervise (4) finally the guard as we have known him historically may find new roles for himself. In the last analysis it may provide a safer work environment.

We offer no single scheme for the course of transition from the fortress prison to a new environment. It will take a state-by-state struggle for each to find their particular way.[14] Some states, not yet committed to the rehabilitation approach, might leap over the next two decades by moving to a justice model now. Others, having already become disillusioned with treatment approaches but trapped into strict custody can begin a process of detent between the keeper and kept based on an agenda of fairness rather than one of increasing clinical services. And for the majority of states located somewhere in between it will take searing self analysis and hard-nosed administrative decisions to redirect their efforts toward justice in prisons.

Transformation of the fortress prison will be expensive but not as expensive as building and operating new fortress prisons. There will be offsetting savings in locking fewer people up (in our accompanying plan for rationalizing sentencing) and further savings are realizable by the dismantling of archaic clinical, industrial and educational programs. Our conception of the prison stay as reasonable and certain (if austere) is based upon the premise that the pay-off will be an increase in the probability of safer streets.

Finally, we suggest a perspective that assumes crime and the criminal are not aberrations, that incarceration for some will be necessary, that in a democratic society the prison administrator's first priority is to accomplish it justly and that we stop seeking messianic "treatments" as a way of "changing" people. David Rothman has some timely advice along these lines:

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[14] Richard McGee suggests a rational sentencing transition plan for California. With a history of strong commitments to county probation California can reasonably collapse its state parole services into county operations. But there are too many variations in the U.S. to suggest (McGee does not) adoption of one transition plan for all or even many cases.

"Such millenial goals and the true-believer syndrome they engender have helped generate and exacerbate our present plight. But pursuing a strategy of decarceration might introduce some reality and sanity in a field prone to illusion and hysteria. Americans will not escape the tradition of reform without change by continually striving to discover the perfect solution. Rather, we must learn to think in tough-minded ways about the costs, social and fiscal, of a system that has flourished for so very long on the basis of fanciful thinking. If we can talk openly and honestly about what we can and cannot accomplish, if we demolish the myths of incarceration, regardless of how convenient or attractive they appear to be, if we put adequate funds and support behind the pilot programs that, when evaluated carefully, should lead us to fund large-scale measures, then we may begin to reverse a 150-year history of failure." (73)

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U.S. Department of Justice
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National Institute of Justice *CRIME FILE Study Guide*

James K. Stewart, Director

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Restitution and Community Service

by Douglas C. McDonald, Vera Institute of Justice

Restitution's Ancient Roots

Court orders to pay restitution or perform community service as a penalty for crimes are being touted as new and innovative sentencing options, but these practices are rooted in practices that are far from new. Requiring offenders to compensate victims for their losses was customary in both ancient civilizations and in the less developed societies we often call "primitive." Victims, or their kin, typically took the lead in organizing the communal reaction to lawbreaking, and the desire for compensation was probably at least as common as the urge to retaliate.

Victim restitution fell into disuse when victims lost their central role in the penal process, a development that occurred when formally organized governments emerged and asserted their authority. Kings and their ministers defined a crime against an individual as a crime against the state, and the machinery of the state assumed the responsibility for administering criminal penalties. Victims desiring compensation were referred to the civil courts. Although judges here and there may have continued to order restitution payments as an adjunct to a criminal sanction, it is fair to say that restitution had effectively vanished from criminal law and procedure in Western societies by the 19th century.

Moderator: James Q. Wilson, Collins Professor of Management,
University of California, Los Angeles

Guests: Newman Flanigan, District Attorney,
Suffolk County, Boston
J. Albert Kramer, Judge,
Quincy, Massachusetts, District Court
Michael Smith, Vera Institute of Justice

Punishment for crimes has traditionally been thought of as "paying a debt to society," but in the case of restitution and community service, this is more than a figure of speech. Restitution demands a payment by the offender to the victim, and community service demands that the offender perform a specific number of hours of work on community projects.

Contemporary Restitution and Community Service

The idea resurfaced in the mid-1960's. Penal reformers advocated the use of two different types of restitution-oriented sanctions: direct compensation of the victim by the offender, usually with money although sometimes with services ("victim restitution"), and unpaid service given not to the victim but to the larger community ("community service").

Community service sentences were formalized in the United States when judges in California's Alameda County Court devised, in 1966, a community service sentencing program to punish indigent women who violated traffic and parking laws. Too poor to pay a fine, these women were likely to be sentenced to jail. But putting them behind bars imposed a hardship on their families. By imposing community service orders, the courts broadened their store of available penalties, extracted punishment from the offenders, lightened the suffering visited upon their innocent families, avoided the cost to the public of imprisonment, and produced valuable services to the community at large. As Alameda County's judges gained experience with the new sentencing option, they broadened the program to include male offenders, juveniles, and persons convicted of crimes more serious than traffic or parking violations.

Community service sentences were given a big boost when the British Government instituted a nationwide program in 1973. Within a few years, tens of thousands of offenders throughout the United Kingdom were placed on probation to work off community service obligations. The program demonstrated the feasibility of using the sentence on a large scale, and similar programs sprang up in the United States and other countries, including Australia, New Zealand, and Canada.

Victim restitution programs soon came onto the U.S. scene. In 1972, the Minnesota Restitution Program—probably the first such effort—gave prisoners convicted of property offenses the opportunity to shorten their jail stay, or avoid it altogether, if they went to work and turned over part of their pay as restitution to their victims. Courts throughout the country adopted the idea, modifying it in various ways, and began to incorporate restitution agreements into their sentencing orders.

Today, the most common practice is for the courts to determine the nature and extent of the restitution to be ordered and to impose it as a condition of probation. In perhaps a third of the programs, the scenario resembles that shown in the Crime File program. Prior to sentencing, judges refer willing offenders and victims to court-appointed mediators to negotiate agreements specifying how offenders will compensate victims for their losses or injuries. These agreements are imposed as a condition of the sentence.

In many jurisdictions, victim restitution and community service result from an understanding among all parties—judge, prosecutor, offender, and victim—that criminal charges will be dropped once restitution is made or community service is performed. This practice is consequently not a sentencing alternative at all but a procedure for diverting the defendant from further prosecution.

Many critics are troubled by these pretrial diversion practices because courts or prosecutors sometimes obtain what amounts to a sentence from persons who, in many instances, might not have been found guilty had they exercised their right to full-blown adjudication. The preferred procedure, in the eyes of these critics, is to limit restitution or community service obligations to sentences imposed after guilt has been formally established.

Supporters, however, argue that diversion is beneficial precisely because persons not yet wedded to a life outside the law can avoid the stigma associated with a conviction and, consequently, may more readily become law abiding once again. Ultimately, whether one values or disapproves these diversion procedures depends in large part on how they are used and for what types of defendants.

Since the end of the 1970's, the number of community service and restitution programs has increased dramatically. To cope with a growing victims movement, toughened sentiments toward drunk drivers, and jail and prison crowding, State and local governments across the country are rapidly expanding the availability of both types of programs.

A recent survey estimates that there are at least 500 to 800 programs of different sizes for juvenile offenders in this country. No surveys have been done of adult programs in the past decade, but it is probably safe to guess that 250 to 500 programs serve the criminal courts. With increasing frequency, judges in jurisdictions lacking formally organized programs are also fashioning restitution and community service sentences of their own.

Even though community service and restitution have become more popular in recent years, it is important to recognize that they have still established little more than a beachhead in the American courts. Only a small minority of the courts in this country order either of these sentences with any regularity, and the proportion of offenders receiving them is even smaller. Most judges continue to rely primarily on the few sentencing options that have long been available—imprisonment, fines, probation, and in some States, suspended sentences or their equivalent.

Why Use the Sentences?

One barrier to broader acceptance of victim restitution and community service as criminal sentences has been the lack of agreement as to why the courts should impose them in the first place. What penal objectives should judges try to achieve with them? Should the courts punish offenders, rehabilitate them, or restrain them from committing more crimes? Should a sentence be imposed to serve primarily as a deterrent, a message aimed at would-be lawbreakers? Should victim restitution be supported because it has a beneficial effect on offenders or because it serves victims' needs? Or should the courts embrace these sentences as substitutes for imprisonment in the hope that they are more constructive and less costly to the taxpayer?

The answers to the preceding questions affect the choice of offender to be given the sentence, the nasty or rewarding nature of the work to be demanded, the burdensomeness of the financial restitution demands, and the strictness with which these sentences are enforced.

Many argue that these sentences can be all things to all people and thereby serve several penal purposes simultaneously. The missions of many programs are formulated in vague, abstract, and often idealistic terms. State laws usually provide little guidance because they are typically written to authorize use of the sentences for broad categories of offenses (for example, "all misdemeanors") without indicating *why* they are to be imposed. This results in considerable diversity of practice from one courthouse to another, and not infrequently, confusion within a single courthouse regarding the proper and acceptable place of these sentences.

However, this multiplicity and imprecision of goals is often a great advantage when the sentences are introduced into courts, because different judges may impose them for different reasons. Whether this will lead to the permanent establishment of these sentences is an open question.

One impulse animating restitution and community service sentencing has been the hope and belief that both may contribute to the rehabilitation of offenders. Disciplined work has long been considered reformative. In addition, offenders performing community service may acquire some employable skills, improved work habits, and a record of quasi-employment that may be longer than any job they've held before. Victim restitution, when it brings offenders and victims face to face, also forces offenders to see firsthand the consequences of their deeds and thus may encourage the development of greater social responsibility and maturity. Some theorists have also argued that offenders' psychic balance and self-esteem are restored when they compensate their victims directly or serve the community more generally.

This program brought to you by the National Institute of Justice, James K. Stewart, Director. The series produced through a grant to the Police Foundation.

But Do They Rehabilitate?

Unfortunately, very few studies have been done on the effect of restitution and community service on offenders. One study evaluated experiments in four different American juvenile courts. Youths were given at random either traditional sanctions or restitution orders, some of which included a community service obligation. In two of the four courts studied, juvenile offenders who were ordered to pay financial restitution or to perform community service had lower recidivism rates than those given other types of sentences. In the third court, the number of cases was too small to draw strong conclusions, but the findings suggested a similar effect. In the fourth court, there was no difference in subsequent criminality.

The effects of ordering adult offenders to make financial restitution have not been examined with any rigor, but the few existing studies of community service show less promising results than did the juvenile court study described above. British offenders ordered to perform community service were reconvicted at a relatively high rate (35 to 45 percent, depending on the study) within a year of sentence, a rate that was found to be roughly the same for comparable offenders who received either prison sentences or other nonincarcerative sentences.

Similarly, offenders ordered to perform community service in New York City were rearrested no less often (and no more) than offenders of similar backgrounds who were sent instead to jail and subsequently released. One study of community service in Tasmania claims to have found more positive effects, but weaknesses in that study's research design make it hard to accept this conclusion with confidence.

Given the paucity of systematic attention to the effects of restitution and community service sentences, it is difficult to draw any strong conclusions about their effects except to say that we have no evidence that using them makes much difference in the subsequent criminality of adult offenders. For juveniles, the sentences may have some positive effect, for reasons not understood. We do not know much about whether serving these sentences has positive effects on other aspects of offenders' lives, such as their employment.

Substitutes for Imprisonment?

Both sentences are often advocated as sensible alternatives to incarcerative sentences. It is commonly believed that jails and prisons are schools for crime and that the ability to live in the free community deteriorates as one adjusts to life in the abnormal society of prisoners. As noted above, however, we have no evidence that these nonincarcerative sentences do any better or worse than imprisonment for adults with respect to later criminality. However, the studies tell us if prison or other sentences have greater deterrent or incapacitative effects than community service or restitution; these issues are addressed briefly below.

Is there consequently not a case for preferring use of restitution or community service to imprisonment, if only because imprisonment costs anywhere from $15,000 to $40,000 per prisoner per year and because it can cost as much as $80,000 to $100,000 to build a single cell? Many State and local governments, laboring under the burden of rising prison and jail populations, have been persuaded by this argument and have for this reason created community service and restitution programs for the courts to use.

Encouraging judges to substitute one of these sanctions for jail or prison terms has produced mixed and often disappointing results. Reducing the use of imprisonment is one of the explicit goals of the British policy, but research suggests that British judges use the community service sentence more often than not in instances when another nonincarcerative penalty would have been imposed. Very few of the American programs have been studied systematically, but the preponderance of young persons, white-collar offenders, and first offenders in these programs suggests that the likelihood of a jail sentence would have been very small for many of them.

Judges are reluctant to impose restitution or community service—or any other relatively unconventional sanction—if they believe that doing so does not serve their particular sentencing goals. To the extent that judges sentence persons to jail to incapacitate them temporarily—to take them out of circulation for awhile—community service or restitution will probably not be seen as an acceptable alternative. If judges are primarily motivated to rehabilitate offenders, these sanctions may appear to be attractive options, even though their effectiveness is not well supported by extensive research. But judges, in many instances, do not send offenders to jail to rehabilitate them. More often than not, they seek some mix of sanctions for the sake of punishment (because offenders deserve it), for the sake of deterring offenders or others from future criminality (to scare them straight), and for incapacitation.

Having to pay restitution or to perform unpaid labor can be seen as punitive, and *is* punitive. Both sentences create obligations that require some effort and that need to be backed up by coercive authority. If judges are to substitute these sentences for prison terms, they want to know that the conditions are enforced strictly. They also want to be sure that somebody has clear responsibility for seeing that the orders are carried out and that noncompliance is reported to the court. And judges may want these sentences to send this message to offenders: "You are being punished for your deeds. You must take responsibility for your actions and you must not break the law again, upon pain of further punishment." One attempt to "market" a punitive community service sentencing alternative to the courts may be found in a project conducted by the Vera Institute of Justice in New York City. The project demonstrated that judges will accept a nonincarcerative sentence as a substitute for jail if work obligations are enforced and are in essence punitive.

Which Way the Future?

Community service and victim restitution are important additions to the American courts' list of sentencing options. But their future will depend in part on how—and whether—we resolve the larger debate about the way we should respond to criminals. Beliefs about our ability to control crime were shaken badly by rising lawlessness during the 1960's and 1970's. Legislatures, courts, and the public have lurched from one proposed solution to another. In this unstable world, it is impossible to predict if these new sentences will find an enduring place in the courts or will pass out of existence as yet another fad. If we want to increase the odds that these sentences will become "institutionalized," probably the surest course is to clarify why judges should impose them, under what conditions, and within what limits. Reaching agreement on these questions will not be easy.

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Discussion Questions

1. To what objectives (deterrence, incapacitation, rehabilitation, retribution) should criminal court judges give priority when determining the sentence to impose on adults convicted of property crimes? On property offenders with long records? On juvenile offenders charged with serious lawbreaking? For crimes involving threatened or actual violence against persons?

2. For what kinds of crimes and for what kinds of offenders should the courts order victim restitution? Community service?

3. What type of labor should offenders given community service perform and why? How many hours, days, or weeks should be required, and what rationale should be used in determining this?

4. Under what circumstances would victim restitution be preferable to a jail sentence? Why? And community service?

This study guide and the videotape, *Restitution and Community Service,* is one of 32 in the Crime File series of 28½-minute programs on critical criminal justice issues. They are available in VHS and Beta formats for $17 and in ¾-inch format for $23 (plus postage and handling). For information on how to obtain *Restitution and Community Service* and other Crime File videotapes, contact Crime File, National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850, or call 800–851–3420 or 301–251–5500.

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New Partnerships

FEDERAL BUREAU OF PRISONS

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Education in the FBOP

Since its establishment in 1930, the Federal Bureau of Prisons has recognized that education, vocational training, and work experiences are powerful influences in helping offenders shape more productive lives after their release.

Consequently, the Bureau has attempted over the years to provide such experiences to the varied and changing populations entrusted to its care. Recent developments now permit the provision of these services in a more integrated manner.

BACKGROUND. Before 1930, education, vocational training, and work programs in federal prisons consisted of basic literacy training, a few correspondence courses, and work programs based on institution needs. It was not until a centralized Federal Bureau of Prisons was established in 1933 and Federal Prison Industries (UNICOR) was founded in 1934 that the programs changed. The Bureau's first director, Sanford Bates, established a comprehensive educational program.

Since those early days, the education and training opportunities within the Bureau have expanded dramatically. Academic education programs have been expanded, vocational training facilities have been built, recreation programs have been developed, and libraries have been established. Trained education supervisors have been hired at each institution and the number of teaching and supervisory staff has increased. Inmates are now tested to assess their educational and vocational levels of achievement as well as their aptitudes to benefit from programs designed to enhance their present skills.

The establishment of prison industries provided paid employment and training to federal inmates for the first time. Industrial employment serves to eliminate inmate idleness through productive work experiences and provides funds and services for vocational training for inmates. In addition, UNICOR serves as a motivating force to expand the educational system. Through employment in industries, opportunities are provided to acquire knowledge and skill in trades and occupations that assist inmates upon their release.

UNICOR has recently combined resources with the education branch of the Federal Bureau of Prisons to produce a series of innovative vocational training projects in fields that offer greater than average job growth during the current and ensuing decade. All programs are certified by vocational training schools, junior colleges, or private accrediting agencies.

The education staff at each Bureau institution offers a wide variety of courses geared to help offenders learn to cope not only with personal problems but also to develop their abilities to become productive citizens.

OFFENDER PROFILE. Over 11,000 inmates enroll in educational or occupational training programs on an annual basis. The average daily population figure for the FBOP during fiscal year 1984 was 32,833. Of this number 31.5% were black, 2.0% American Indian, and 0.7% Asian and other minorities. Of the 65.8% who were Caucasian, 18.7% percent were of Hispanic origin. The average age of federal inmates is 35.6 years, and the average time served is 15.6 months.

Inmates represent a broad educational spectrum. The typical offender reads at a 7th grade level and functions academically at approximately the 9th grade level. Most inmates lack a marketable skill. Approximately 52.6% are high school graduates while many have completed college or other postsecondary education courses. This wide variation in offender ability and skill level presents a challenge to the education staff as they strive to be responsive to each offender's particular needs.

EDUCATIONAL GOALS OF THE FEDERAL BUREAU OF PRISONS. Based on identified offender needs, the Federal Bureau of Prisons has established the educational and occupational goal of providing all inmates with opportunities to

- Acquire educational skills commensurate with his or her need and ability through offerings ranging from basic to postsecondary programs
- Acquire or improve a marketable skill through one or more training programs which include the performance of live work which provides a product or service for use by the institution, UNICOR, or another agency and/or employment in the institution or prison industries
- Use leisure time more positively through directed leisure activities.

Program Descriptions

Academic study, job training, life skills and positive leisure activities all combine to better prepare the inmate for responsible citizenship outside the institution. The following briefly describes the seven different educational activities available to offenders.

ADULT BASIC EDUCATION (ABE) programs are designed for the approximately 17% of the federal inmates who have less than a sixth grade education. These inmates are required to enroll in an ABE program for 90 days. Additionally, only those inmates who successfully complete an ABE program are eligible for UNICOR or other paying assignments above the entry level pay grade. Monetary incentives, intensified tutoring, and other positive reinforcements are also used to encourage enrollment in and completion of ABE courses.

ABE is often taught in a Learning Center where students learn at their own pace using programmed instructional materials, audio-visual aids, computer-assisted instruction, and individualized personal instruction. Inmates or community volunteers often serve as educational aides.

Special provisions are also made to accommodate the handicapped and those identified as having a learning disability. Since the ABE program is already highly individualized, such modifications permit the handicapped and learning disabled student to be integrated into the regular program. Adaptations include the provision of special materials such as large print, Braille, or large print typewriters, interpreters for the hearing impaired, readers for blind students, note-takers for the writing impaired, and other individualized instructional techniques as necessary. Policy requires that all institutions now have either a reading specialist or a special education instructor on staff.

GENERAL EDUCATIONAL DEVELOPMENT (GED) is designed for the approximately 16,000 inmates who lack a high school diploma. To meet their needs, high school equivalency courses and the GED examinations are offered. The traditional classroom and the Learning Center approach are used to prepare inmates for the GED examination. GED instructional materials and the GED test are also available in Spanish, French, large print, Braille, and audio cassette.

ADULT CONTINUING EDUCATION (ACE) courses are open to inmates in most federal prisons through contract arrangements with local school districts and/or community colleges. Courses are offered both on a non-credit and credit basis. Continuing education courses usually do not require that students be high school or college graduates. The courses, similar to those offered in many communities nationwide, are designed to enrich inmates' general knowledge or to enable them to learn new skills. Some courses are designed for "brush up" in particular subjects or to meet a special interest, such as speed reading, contemporary issues, or foreign languages. English as a Second Language (ESL) is also offered in institutions where a significant number of inmates speak Spanish as their primary language. If courses that lead to a high school diploma are offered, they are included in the continuing education category.

OCCUPATIONAL EDUCATION (OE) programs provide skill training in a wide variety of disciplines and skill levels, ranging from entry level to highly skilled occupations, in an effort to provide each inmate with a marketable skill. An estimated majority of federal offenders are unskilled at the time of commitment to prison. They have the opportunity to upgrade their skills through instruction and work experience, career orientation, and vocational training. Program options cover a wide range of areas such as the general exploration of the world of work, formal vocational training, apprenticeship programs, on-the-job training in institution offices, shops, and prison industries, and work release into the community.

The most significant recent innovation in occupational education has been the development of pre-industrial training programs. These programs are designed to reduce inmate idleness without compromising factory productivity or safety by providing an initial orientation to the UNICOR world of work. The programs provide hands-on skill training before an inmate takes his or her place in production. They also provide refresher, continuing, or advanced training as needed during production. In addition to classroom work, the pre-industrial programs make use of UNICOR factories during non-production evening and weekend hours for hands-on experience with the equipment. In this phase of their training, inmates perform actual production work under close supervision which is then checked for compliance with standards and eventually sold to customers.

In 1984, the Board of Directors of Federal Prison Industries authorized the expenditure of $3 million for innovative projects in vocational training. These innovative model programs, described in detail later in this booklet, provide training in high growth occupations.

POSTSECONDARY EDUCATION is for inmates who have successfully completed high school and want to further their education. Courses are provided on the basis of inmate interest, need, and ability to succeed in college. On-site programs developed by institutions of higher learning, correspondence courses, and study release are available to meet inmates' needs for postsecondary education.

Under Bureau policy all inmates must pay for college courses. An institution may pay up to one-half of the cost if a student is unable to develop personal resources and if the inmate's classification team approves the college course as an appropriate program goal.

SOCIAL EDUCATION programs consist of planned learning activities that assist inmates in their adjustment to the institution, their personal growth, and their ability to cope with problems encountered in society upon release. The courses are designed to develop competency in "life skills" connected with family relationships, household management, job seeking, consumer law, and so forth.

RECREATION AND LEISURE ACTIVITIES are sufficiently diversified so that most prisoners find something of interest. Recreation specialists design programs so that inmates can improve their physical and mental health, improve interpersonal skills, reduce stress, and learn to use their free time constructively.

Intramural sports include softball,

baseball, basketball, and volleyball. Weightlifting, handball, soccer, track, and physical conditioning and weight reduction are also important physical activities for inmates. Inmates and community volunteers actively serve as umpires and coaches, and many community athletic teams come into the prisons to compete with institution teams.

Hobbycraft programs also provide outlets for artistic expression. Inmates pursue a variety of arts and crafts including ceramics, painting, woodworking, and leather craft. Some completed art works are sold by inmates through the institution visiting room program and proceeds are returned to the inmate.

One particular program, artist-in-residence, is funded jointly by the Federal Bureau of Prisons and the National Endowment for the Arts. Professional artists are employed, on an experimental basis, for one year in selected institutions to establish visual or performing arts programs and to pursue their own art form in the prison setting. Approximately twenty-five federal prisons have now participated in this program and most have continued all or a portion of the experimental effort.

Increasingly, emphasis is being placed on leisure programs as important tools in helping inmates cope with the psychological impact of incarceration and to help maintain good health as it affects institution life and job performance.

Delivery of Education Services

As in any education system, a variety of support services, such as testing, counseling, and data management, must complement the actual delivery of teaching programs. This section will describe these services and their impact on offender participation and achievement.

TESTING. During their orientation period, all English-speaking prisoners (except pre-trial, study and observation, and sentenced aliens with a deportation detainer) take the Stanford Achievement Test (SAT) to determine their academic achievement level. Other appropriate tests are administered to individual inmates if further testing is required. The Spanish version of the Comprehensive Test of Basic Skills (CTBS) is administered to those inmates for whom Spanish is the primary language.

EDUCATION REPRESENTATIVE. During orientation, an education representative meets with each new inmate to help him or her establish realistic academic and occupational goals and to map an education program. Program plans are periodically reviewed to ensure that the original goals continue to be compatible with the needs, capabilities and interests of the inmate. If prisoners choose to do so, they can meet with an education representative to discuss education related problems. These representatives help inmates meet individual goals and inform them of new programs and opportunities.

IN-HOUSE PROGRAMS. Approximately 95% of all education programs are offered within the institutions. In an effort to enhance participation and motivation, education facilities are modern in design and pleasant in appearance, thus providing an atmosphere conducive to learning. Also, most institutions have up-to-date audio-visual materials and equipment to facilitate the education process. Nontraditional teaching methods such as individualized instruction, computers, and instructional television are successful with many offenders who have failed in traditional classroom settings. Education programs maximize the use of individualized learning procedures and materials, and inmate tutors often serve as education aides and help to increase student-teacher contact. The education departments are open up to 12 hours a day on a year-round basis; work programs operate up to 8 hours a day.

COMMUNITY RESOURCES. Many education and training programs are strengthened through services provided by community-based educational institutions. Some are within walking distance of the prison while others require transportation to reach. Universities, two- and four-year colleges, and vocational training schools provide accredited academic and occupational instruction. Courses are offered both inside and outside the institution depending on the custody level of the inmate population. Study release enables carefully selected inmates to attend local education facilities during the day and return to their respective institutions at night.

The community also participates in the department's activities by providing volunteers who give their time to organize and direct leisure time programs and serve on advisory groups inside the institutions. Citizens are active in a wide variety of inmate organizations including such groups as Alcoholics Anonymous, Toastmasters, Jaycees, and in religious, athletic, and recreational activities. From time to time, these same volunteers arrange for qualified inmates to join them in the community for special programs sponsored by their respective organizations. Community groups and individual volunteers are indispensable in providing assistance for the many social, educational, recreational, athletic, and religious activities available at federal prisons.

LAW LIBRARIES AND LIBRARY SERVICES. The Federal Bureau of Prisons has long recognized the right of inmates to have access to the courts and to legal research material. Thus, the Bureau has provided law libraries for many years. In 1977, the types of publications available were widely expanded to meet the requirements of the Supreme Court decision, **Bounds v. Smith.**

A trained staff member is present on a part-time basis to help offenders find appropriate resource materials. Staff is responsible for ordering and maintaining all law library materials.

Federal institutions also provide general library services, sometimes including a formal library from which inmates check out books of their choice. In many instances, library services are available through the auspices of state, local, or university libraries. Books are ordered by mail, by special inter-library loan arrangements, or from bookmobiles visiting the institutions. Generally, there is no charge for these services.

Recently published paperback books are purchased on a quarterly basis by many institutions and large quantities of surplus paperbacks are also donated from the community. Paperbacks are usually distributed to the housing units for easy access. Library services are under the general supervision of a credentialed librarian in the Bureau's Central Office who is available for consultation and technical assistance to all institution staff.

OFFENDER PARTICIPATION AND ACHIEVEMENTS. The Inmate Programs Reporting System (IPRS) is an automated performance measurement system that monitors inmate program involvement and performance. Through IPRS, inmate program plans, progress and achievements are documented and updated.

The IPRS data is used as a management tool to determine each institution's funding and programming needs. The data is also used to measure the degree of success of the Bureau's educational efforts.

Offender participation in the many available programs has increased dramatically (see appendix 2, "Inmate Completions, Fiscal Years '80-'84). This increase is expected to continue as the new partnership among education, industries, and the community is strengthened and additional avenues of interrelationships are explored.

ORGANIZATION STRUCTURE AND RESPONSIBILITIES. In 1984, over 500 staff were directly involved in administering and providing education, training, and leisure programs for federal inmates. In the past fiscal year, the Industries, Education, and Training Division was established within the Bureau to coordinate these related programs and services.

Prior to 1974, institution education departments were directly accountable to the Bureau's Central Office in

Washington, D.C., where a professional staff provided overall program administration. In 1974, the Bureau of Prisons established five regional offices, each with an education administrator. These administrators monitor education, training, and leisure activity services at the institutions within their regions. They also provide planning and program assistance.

The Central Office staff is now responsible for overall budget development and implementation, policy development, definition and maintenance of performance standards, in-service staff training, and the identification of new instructional materials, methods, and related resources.

Institution supervisors of education choose their own teaching materials and design their own programs within the standards established by the Central Office and in consultation with the regional education administrator.

FUNDING. During fiscal year 1984, expenditures for general and occupational education and for leisure activity programs were in excess of $23 million. Funding comes from two sources: earnings (profits) from Federal Prison Industries and congressional appropriations.

Trends and Challenges

In 1983, education in the Federal Bureau of Prisons was placed under the same organizational umbrella as prison industries. This new partnership places equal emphasis on job training, work, and education; all play a role in providing inmates with the best possible post-release survival skills.

"Project $3 Million" was established in an effort to strengthen vocational education throughout the Federal Bureau of Prisons. Under the program, UNICOR sponsors skill training programs that meet special, rigorous criteria: service to the institution, UNICOR, or other agency; training for highly marketable jobs; community involvement in designing, delivering, and certifying the skill training through voluntary or contractual participation; innovative training methods; and critical evaluation of the overall program. Some 46 programs are currently in place in over 30 institutions and provide training for occupations ranging from entry level to advanced technology. Typical of the programs are the following:

OPTICS. An optics training program, at the Federal Correctional Institution Butner, North Carolina, is fully integrated with an apprenticeship program. Classroom instruction is provided on the theory of human optics and lens grinding. After completion of the academic program, trainees assume paid apprenticeship jobs in a new UNICOR optics factory. Eye glasses are manufactured for all inmates within the Federal Bureau of Prisons and for some patients in Veterans Administration hospitals. The apprenticeship program leads to certification by a state licensing board.

CULINARY ARTS. Various kinds of food service programs are operating at the Federal Correctional Institutions at Fort Worth, Texas, and Lexington, Kentucky, and at the Metropolitan Correctional Center, Miami, Florida. Students are involved in various phases of culinary arts training: food service preparation and presentation, short-order cooking, and cooking and baking.

BUSINESS INFORMATION CENTERS AND DATA PROCESSING. Business and office skills programs, involving state-of-the-art equipment, operate in the Federal Correctional Institutions at Danbury, Connecticut, Memphis, Tennessee, Milan, Michigan, Morgantown, West Virginia, Pleasanton, California, and Sandstone, Minnesota. A very broad range of skill training is provided and includes instruction in word processing, computer programming, computer literacy, and microcomputer accounting.

LANDSCAPE TECHNOLOGY. Landscape technology programs, which provide a service to the institutions as well as prepare trainees for entry level employment, are provided at the Metropolitan Correctional Center, Tucson, Arizona, the Federal Correctional Institutions at Texarkana, Texas, and Phoenix, Arizona, and Federal Prison Camps at Big Spring, Texas, and Maxwell, Alabama. Landscape technology features a career ladder that prepares a student for direct employment after the first semester of training. Students who hold advanced certificates can seek employment at higher levels.

DRAFTING AND COMPUTER-ASSISTED DRAFTING. Several institutions have undertaken projects that provide training in drafting and design technologies; in other projects computer-assisted drafting has been added to the basic drafting course. The U.S. Penitentiary, Lewisburg, Pennsylvania, and the Federal Correctional Institutions at Texarkana, Texas, Bastrop, Texas, Danbury, Connecticut, and Oxford, Wisconsin, provide these programs. Wherever possible, they provide precise scale renderings for institution construction and repair projects. The training is rigorous and fully comparable to that available in the community.

Other noteworthy programs involve training in computer sciences, petroleum technology, waste water treatment, pest control, cleaning services, and diesel truck driving, repair, and maintenance.

Additional innovative projects are under consideration and are expected to be operational within the coming year. The combination of classroom instruction coupled with hands-on, live work is expected to help inmates compete successfully in the job market when they are released.

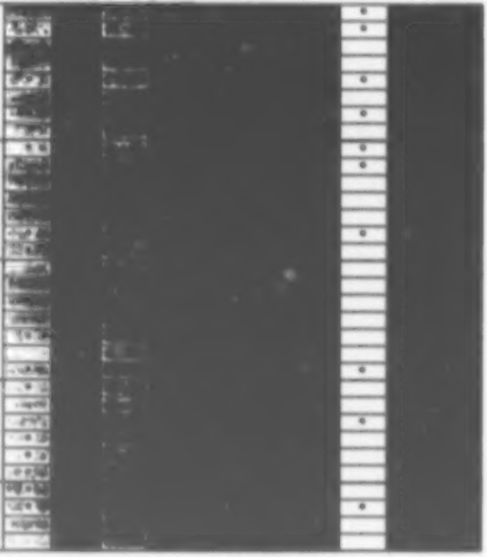
Conclusion

Education and recreation staff in the Federal Bureau of Prisons are justifiably proud of the many opportunities offered federal prisoners to use education and related programs to improve not only the quality of their life while incarcerated, but also their chances for post-release employment and successful personal and community activities.

All programs are reexamined periodically to determine whether they meet the needs of the participants and whether they are sufficiently motivating to maintain sustained enrollments. This brochure describes programs which are constantly changing to keep up with what is viewed as the best in a dynamic field. This is done because federal correctional administrators continue to believe that education can serve as a change agent, particularly to people who need and want to change.

Appendixes

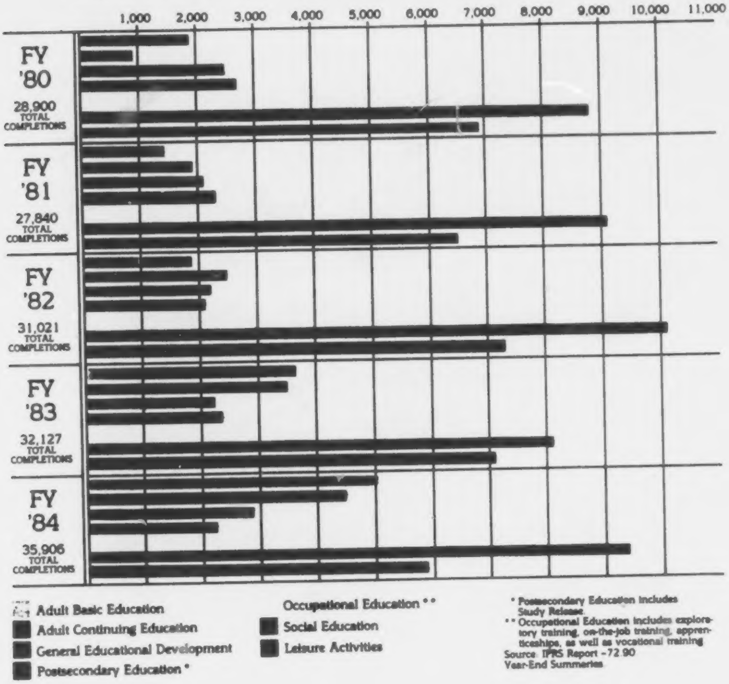
Ten Most Frequently Offered Occupational Programs By Institutions—FY '84



Region	Institution
NORTH-EAST REGION	Alderson
	Allenwood
	Danbury
	Lewisburg
	Morgantown
	Otisville
	Petersburg
	Ray Brook
SOUTH-EAST REGION	Ashland
	Atlanta
	Butner
	Lexington
	Memphis
	Tallahassee
	Talladega
NORTH CENTRAL REGION	Duluth
	Leavenworth
	Milan
	Oxford
	Sandstone
	Springfield
	Terre Haute
SOUTH CENTRAL REGION	Big Spring
	El Reno
	Fort Worth
	La Tuna
	Seagoville
	Texarkana
WESTERN REGION	Englewood
	Lompoc
	Pleasanton
	Terminal Island

- Welding
- ■ Business Education
- ■ Auto Mechanics
- ■ Drafting
- ■ Computer Education
- ■ Heating/Ventilation & Air Conditioning
- ■ Small Engine Repair
- Cosmetology/Barbering
- ■ Electricity/Electronics
- ■ Masonry

Inmate Completions By Program—Fiscal Years '80–'84

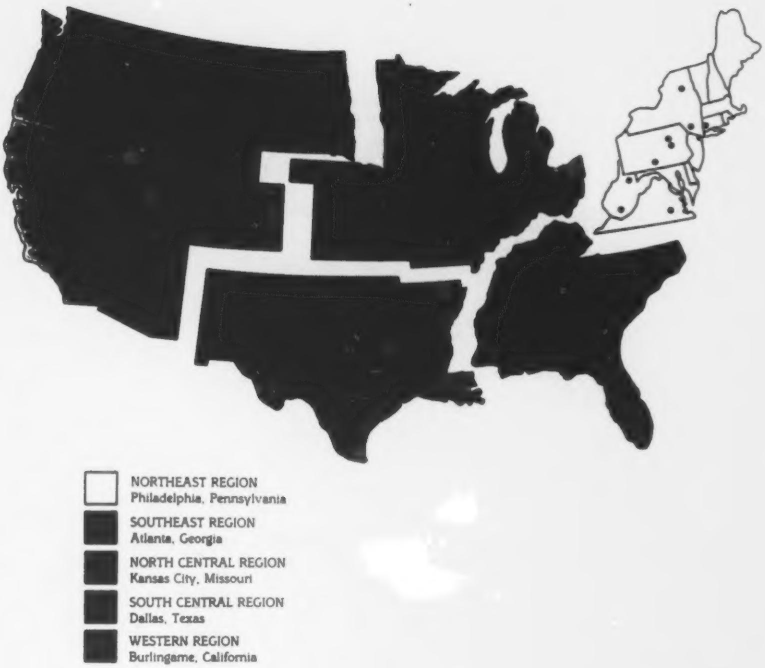


* Postsecondary Education includes Study Release.

** Occupational Education includes exploratory training, on-the-job training, apprenticeships, as well as vocational training

Source: IPRS Report -72.90 Year-End Summaries

Federal Bureau of Prisons Facilities


NORTHEAST REGION
Philadelphia, Pennsylvania
SOUTHEAST REGION
Atlanta, Georgia
NORTH CENTRAL REGION
Kansas City, Missouri
SOUTH CENTRAL REGION
Dallas, Texas
WESTERN REGION
Burlingame, California

Institutions of the Federal Bureau of Prisons

Northeast Region
FCI Alderson, West Virginia 24910
FPC Allenwood, Montgomery, Pennsylvania 17752
FCI Danbury, Connecticut 06810-3099
USP Lewisburg, Pennsylvania 17837
FCI Loretto, Pennsylvania 15940
FCI Morgantown, West Virginia 26505
MCC New York, New York 10007-1779
FCI Otisville, New York 10963
FCI Petersburg, Virginia 23804-1000
FCI Ray Brook, New York 12977-0300

Southeast Region
FCI Ashland, Kentucky 41101
USP Atlanta, Georgia 30315
FCI Butner, North Carolina 27509
FPC Eglin Air Force Base, Florida 32542
FCI Lexington, Kentucky 40511
FPC Maxwell Air Force Base, Alabama 36112
FCI Memphis, Tennessee 38134-0003
MCC Miami, Florida 33177
FCI Talladega, Alabama 35160
FCI Tallahassee, Florida 32301

North Central Region
MCC Chicago, Illinois 60605
FPC Duluth, Minnesota 55814
USP Leavenworth, Kansas 66048
USP Marion, Illinois 62959
FCI Milan, Michigan 48160
FCI Oxford, Wisconsin 53952
FMC Rochester, Minnesota 55903-4600
FCI Sandstone, Minnesota 55072
USMCFP Springfield, Missouri 65808
USP Terre Haute, Indiana 47808

South Central Region
FCI Bastrop, Texas 78602
FPC Big Spring, Texas 78721-6085
FCI El Reno, Oklahoma 73036
FCI Fort Worth, Texas 76119
FCI La Tuna, Texas 88021
FDC Oakdale, Louisiana 71463
FCI Seagoville, Texas 75159
FCI Texarkana, Texas 75501

Western Region
FPC Boron, California 93516
P.O. Box 500
FCI Englewood, Colorado 80123
USP Lompoc, California 93436
FCI Phoenix, Arizona 85029
FCI Pleasanton, California 94568
FCI Safford, Arizona 85548
MCC San Diego, California 92101-5078
FCI Terminal Island, California 80731
MCC Tucson, Arizona 85706

Key to abbreviations
USP—United States Penitentiary
FCI—Federal Correctional Institution
FDC—Federal Detention Center
FPC—Federal Prison Camp
MCC—Metropolitan Correctional Center
FMS—Federal Medical Center
USMCFP—U.S. Medical Center for Federal Prisoners

Reproduced from U.S. Department of Justice. National Institute of Justice. Identifying drug users and monitoring them during conditional release. Washington, The Department, 1988. p. 9-17.

Monitoring the criminally involved drug user

Background

Early efforts at monitoring: the 1970s

As part of the nation's response to the heroin epidemic of the late 1960s and early 1970s, new approaches to monitoring criminally involved drug users in the community were developed. These approaches were designed to interrupt the cycle of drug-use/crime/drug-use and to end the "revolving door" syndrome of drug-using offenders, who often passed through the criminal justice system repeatedly.

During this time, many cities established Treatment Alternatives to Street Crime (TASC) programs to identify criminally involved drug abusers and refer them to treatment.[9] In some instances, formal diversion programs were established, and criminal charges were dropped against those drug users who completed the programs successfully. In other instances, the drug users' performance in treatment was simply viewed as a factor to consider when deciding whether continued liberty (i.e., non-incarceration) should be granted. Many of these programs to deal with drug users became institutionalized as key features of local criminal justice systems, although — as national attention to the problem of drug abuse waned in the late 1970s — others were discontinued.

Increased jail and prison crowding

In recent years, most urban jurisdictions have experienced sharply increased levels of detention and incarceration, which have resulted in crowded jail and prison facilities. Most of these jurisdictions are both building (or planning to build) additional jails and prisons *and* are seeking additional, safe, effective ways to release individuals who are now detained or incarcerated. Moreover, many jurisdictions are under court orders to improve jail and prison conditions; in many instances a court-imposed cap exists on the number of inmates that a given facility can house. Because of these caps, some jurisdictions have been unable to accept new prisoners or detainees, and others have been forced to release certain previously incarcerated individuals in order to comply with court orders.

The renewed search for safe, effective conditional release alternatives

Jail and prison crowding has spawned a renewed search for ways to release inmates while preserving community safety. As a result, many jurisdictions have established — or are considering establishing — intensive supervised release programs, electronic monitoring programs that monitor compliance with *home* detention, work release programs, etc.[10] Because of the high release risk posed by drug users, in comparison with non-users, some jurisdictions are making special efforts to develop programs that facilitate the safe release of drug users, both pretrial and post-conviction.

Distinguishing features of pretrial versus post-conviction stages of criminal justice processing

The pretrial stage of criminal justice processing varies from the post-conviction stage in several major respects. Most importantly, the pretrial stage deals with defendants who have been *accused* of committing criminal acts, rather than with offenders who have been found guilty of the charges against them. This constrains the actions that the criminal justice system can take to reduce the release risk posed by defendants awaiting trial, even after a probable cause finding has occurred at initial court appearance.

Further, release decisions at the pretrial stage must typically be made very quickly after arrest and, hence, must be based on very limited information. This is in sharp contrast to the information available at later stages of the criminal process, such as sentencing to probation or parole release, when several weeks may be spent developing a comprehensive profile of an offender as well as other data needed for key criminal justice decisions before the offender is released to the community.

Pretrial monitoring: the Washington, D.C. experience

Description of program operations

The D.C. Pretrial Services Agency (PSA) assesses defendants' pretrial release risks and makes recommendations to the local trial court regarding appropriate conditions of pretrial release in each case. As part of its mandate, the Agency now collects urine specimens from virtually all local arrestees, shortly after they are arrested, and tests those specimens for the presence of five drugs (opiates, cocaine, phencyclidine or PCP, amphetamines and methadone). Defendants who are identified at the bail-setting stage as drug users, either by urinalysis or self-reports, are usually released non-financially to await trial, *conditioned on* entering treatment or entering PSA's program of periodic urine-testing before trial. If defendants violate their conditions of pretrial release – e.g., by continuing to use drugs – PSA reports this to the court, which may hold a defendant in contempt of court or otherwise impose sanctions for the violation. PSA's adult testing program, initiated in March 1984 under a grant from NIJ, is now funded by the D.C. Government. The program is being evaluated by Toborg Associates, under a separate grant from NIJ.[11]

Program outcomes

Since PSA's pretrial drug detection program for adult defendants began in March 1984, more than one-half of all tested arrestees have been identified as drug users. Indeed, during the first half of 1987 approximately *two-thirds* of tested arrestees were found to be active drug users, with cocaine, PCP, and opiates the major drugs of abuse.[12] These drugs were often used in combination.

One issue concerning urine-testing is whether the results, obtained shortly after arrest, could be used to improve the classification of defendants with regard to the comparative risk of pretrial rearrest and/or failure-to-appear (FTA) that each defendant poses. Preliminary analyses of this issue suggest that urine-test results do provide an improvement in risk classification of defendants.[13] Planned analyses will further assess the strength of urine-test information for classifying defendants as to pretrial misconduct risk.

As stated previously, certain D.C. defendants who were released before trial were ordered to report to PSA for periodic pretrial urine-testing. The defendants who complied with the program requirements (defined for the purposes of the analysis as appearing as scheduled for four or more consecutive tests) had much lower rates of pretrial rearrest and FTA than defendants who did not comply – that is, the dropouts. Indeed, rates of pretrial rearrest and FTA for those who *complied* with the program – about two-thirds of all persons ordered into the program – were about one-half the rates of the defendants who did not comply. For example, the pretrial rearrest rate for the defendants who complied was 16 percent, as compared to 33 percent for the dropouts. Failure-to-appear rates for the two groups were 17 percent and 33 percent, respectively. These differences in the rates of pretrial misconduct exist *after* controlling for other factors that might affect pretrial misconduct, such as prior record, charge, age, and so on.[14]

Thus, compliance with urine-testing separated defendants into two groups, with large differences in expected pretrial misconduct rates. This suggests that the pretrial urine-testing program serves as a signaling device: by continuing to appear for urine-testing, defendants signal that they pose relatively low risks of pretrial misconduct if released – despite the fact that they were identified at the time of arrest as drug users and, hence, as members of a group that poses a higher-than-average risk of pretrial misconduct.[15]

Practitioners' perspectives

The urine-testing program that PSA operates for arrestees and drug-using defendants who are released before trial has been very popular with officials of the local criminal justice system – particularly with judges, who are charged with the responsibility of setting appropriate conditions of pretrial release and wish to have information provided about defendants' risk factors as aids in making those decisions. Many judges have commented that they are now willing to "take a risk" on releasing a drug user before trial, conditioned on participation in PSA's urine-testing program, because they know that PSA will monitor the defendant and promptly report any continued drug use to the court.[16] This practice is confirmed by statistics indicating that rates of non-financial pretrial release *increased* after the urine-testing program began.[17]

Shortly after PSA's drug detection program for adult defendants became operational, judges and other local practitioners began to comment on the need for a similar program for *juveniles* facing criminal charges. This concern was prompted by the high rates of drug use found among young adult defendants, ages 18-21, as shown in Figure 1. Subsequently, in October 1986, an NIJ-funded *juvenile* urine-testing program became operational in the District of Columbia, also operated by PSA.

Keys to program acceptance

There are a number of reasons for the success of PSA's pretrial urine-testing program. These include the following:

- High-level criminal justice officials have been supportive of PSA's program. They were familiar with the ways in which urine-test results could be used, because widespread urinalysis screening of arrestees had been done in the District of Columbia, off and on, since 1971. However, no previous program was as systematic, comprehensive or responsive to the needs of the court as is PSA's.

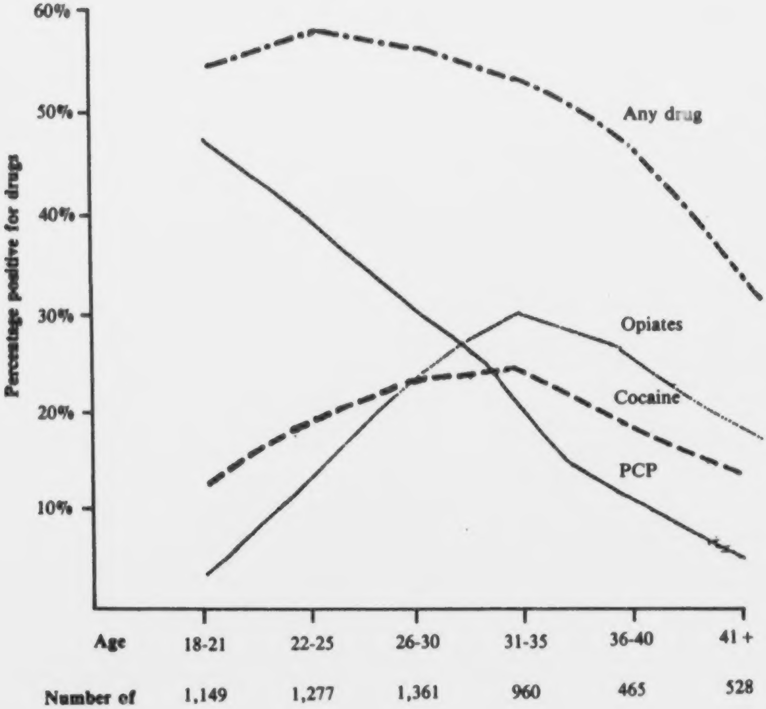
- PSA's program was *carefully planned and implemented*. Considerable attention was given to developing rigorous chain-of-custody procedures, determining the proper uses of urine-test results in criminal justice proceedings and acting to preclude other uses of them, training and educating PSA staff as well as other criminal justice practitioners about the program, and so on.

- Urine-test results obtained at the time of arrest are used in D.C. solely *to determine conditions of pretrial release*. By the terms of PSA's implementing legislation, they cannot be used to determine guilt or innocence on the instant charge or as evidence of probation or parole violation in another case. Similarly, urine-test results for defendants who are tested periodically as a condition of pretrial release can be used only to *monitor compliance with release conditions*; they cannot be used for other purposes. These limitations have obviated a variety of legal problems. The *carefully constrained uses of the urine-test results* from PSA's program has been a critical factor affecting the widespread acceptance of the program.

- The urinalysis technology used by PSA – the EMIT (enzyme multiplied immunoassay technique) system – has been objectively rated as having a high level of accuracy; moreover, the equipment does not require toxicologists to operate it. As a result, PSA staff were able to learn to use the equipment after only a short training period, and they consistently have provided the court with reliable test results.

Figure 1

Washington, DC Arrestees with positive urine tests, by age and drug (June 1984 – January 1985)



Special legal concerns

There have been few legal challenges to the PSA pretrial testing program since it began, and to date no major feature of the program has been challenged successfully.[18] This is largely due to the careful attention that was given to legal concerns and defendants' rights during the planning stages of the program. Although there is little case law with regard to urine-testing in the District of Columbia, there has been litigation in other jurisdictions. As a general rule, to survive legal challenges, drug testing of defendants must be reasonably related to a legitimate state interest; must not discriminate against suspected classifications of persons tested (e.g., must not discriminate by age, race, sex); and the intrusion that results must be balanced against the defendants' valid privacy interests and the right to be free from unreasonable searches and seizures.[19] Thus, whether pretrial drug testing of arrestees is constitutionally permissible in a given situation depends directly on how it is applied – that is, what purposes it is expected to serve and what procedural protections are present to insure against violations of defendants' rights.

Replication and expansion efforts

BJA is sponsoring development of pretrial urine-testing programs similar to the one PSA operates in the District of Columbia. New programs began operation late in calendar year 1987.

Post-conviction monitoring

Routine Probation and Parole Urine-Testing and/or Referral to Treatment

A variety of release conditions can be imposed on any probationer or parolee to try to protect community safety. These restrictions on the behavior of a convicted offender may include complying with a curfew, staying away from certain individuals or neighborhoods, obtaining or maintaining a job, etc., as well as routine reporting in person to a probation or parole officer. In addition, special conditions of probation or parole may be imposed on drug users or offenders with a history of drug use; these may include entering a treatment program for drug abuse or participating in a urine-testing program to demonstrate that no drugs have been used.

Additionally, some jurisdictions now provide for intensive supervision programs (ISPs), where high-risk offenders released into the community are monitored more closely; probation and parole officers' caseloads in these programs are much smaller than the norm. In spite of their small caseloads, ISP probation officers in Brooklyn typically did not know, in the absence of urine-testing, that the probationers they were supervising were using drugs.[20]

The impact of probation and parole supervision varies considerably across jurisdictions. Factors affecting impact include the quality of treatment available to drug abusers and the consistency with which sanctions are imposed when offenders violate conditions of probation and parole.

The California civil addict program

Although a variety of civil commitment programs for heroin addicts have been implemented over the years – including well-publicized programs in New York state and at the federal level – the California Civil Addict Program has received the most extensive evaluation. The seven-year program consisted of a period of incarceration, followed by parole or monitored release – including frequent urine-testing – in the community.[21] Violation of program or parole regulations could result in reincarceration.

One of the major studies of this program considered the impact of different types of supervision on parolees' behavior.[22] It found that intensive supervision, combined with urine-testing, was more effective in reducing parolees' drug use and criminality than either regular supervision without urine-testing or no supervision.

Another aspect of this evaluation compared addicts admitted to the program and subsequently released to the community under supervision with addicts admitted to the program and subsequently discharged after a short time because of legal errors in the commitment proceedings. During the first five years after commitment the program group reduced its daily narcotics use and criminality by considerably more than did the discharged group. The reduction in criminal activity, for example, was 19 percent for the program group and 7 percent for the discharged group. Other analyses[23] have also confirmed the finding that the program was generally effective in reducing heroin use and associated criminality.

TASC referrals

Treatment Alternatives to Street Crime (TASC) programs serve as a bridge between the criminal justice system and the treatment community by identifying drug abusers who are involved with the criminal justice system, referring them to treatment and monitoring their progress while in treatment.[24] Typically, this monitoring consists of following up on drug users' performance in treatment and reporting on this performance back to the appropriate criminal justice authorities. Some TASC programs also conduct periodic urine-testing as an additional way of monitoring offenders' compliance with probation or parole requirements to remain drug-free.

Although no comprehensive evaluation of the TASC program has been conducted, several studies have provided partial assessments of TASC's impact.[25] The Treatment Outcome Prospective Study (TOPS) found that TASC clients under legal coercion remained in both residential and outpatient drug free treatment longer than other clients.[26] Because length of time in treatment is usually associated with better outcomes, this finding suggests that TASC may be having a positive impact on client behavior.[27]

Other approaches

Because of the strong relationship repeatedly found between drug use and crime, and because of the repeated finding that drug users have lower rates of criminal activity when they are in treatment than when they are not, some researchers and practitioners have proposed that "compulsory treatment" be more widely adopted for certain drug users as a technique for reducing their criminal activity.[26] Interest in the concept of compulsory treatment has also spawned a resurgence of interest in civil commitment of drug users, particularly users of such hard drugs as heroin and cocaine. Although there is little recent data available to assess the potential effectiveness of such an approach with *today's* users of various drugs, further consideration of it – and experimental efforts to determine its utility – would seem appropriate.

Conclusions

Several major conclusions suggest themselves with regard to monitoring criminally involved drug abusers. These include the following:

- A number of monitoring approaches have been implemented, with varied success, to try to reduce the criminality of abusers of different types of drugs. Some of the more effective strategies are those in which the criminal justice system and the treatment community work together. These two systems need to promote more frequent and regular interaction in order to plan and implement such effective strategies.

- One monitoring approach, which has been used extensively with defendants awaiting trial in Washington, D.C., is periodic urine-testing during the pretrial release period. Preliminary findings indicate that defendants who participated satisfactorily in this program had sharply reduced rates of pretrial rearrest and failure-to-appear for court.

- Urine-testing may also be successfully applied to offenders who have been convicted. For example, the California Civil Addict Program found that heroin-using parolees who participated in a program of urine-testing along with supervision had lower rates of criminality than otherwise similar parolees who received supervision without testing or no supervision.

- While urine-testing alone may be an effective intervention for some drug abusers, others will require more extensive interventions, perhaps including compulsory treatment. Unfortunately, for certain drugs, such as cocaine, whose use is widespread among offender populations, treatment methods are not as well-developed as for heroin. Moreover, in some communities even heroin treatment availability is limited. And treatment itself, even when available, will not be effective for all drug abusers. Hence, treatment — like urine-testing — must be viewed as an approach to reducing drug use and crime that will be effective for some, but not all, offenders. More research is needed to determine the particular types of interventions that are most effective with particular types of offenders.

- Any monitoring program, particularly if it includes a potentially controversial urine-testing component, must be carefully planned before it is implemented and subjected to continuing evaluation after it becomes operational. Particular consideration must be given to the actions that will be taken if a drug user fails to comply with program requirements and whether the jurisdiction has the appropriate resources (e.g., treatment slots, jail space) to enforce those actions.

- Although it is still in the developmental stage, hair analysis may become an option in the future in situations, such as parole and probation, where there is a tradeoff between the value of the recency of information on an offender's drug usage and the desire for continuous coverage over a period of several days or weeks. For such applications it may become possible to use hair tests to complement urine tests without loss of information on drug usage for the intervals between the tests.

Reproduced from U.S. Department of Justice. National Institute of Corrections. Correctional education: a state of the art analysis. Washington, The Department, 1987. p. 1-10.

CHAPTER I

BACKGROUND

Introduction

This state of the art survey of adult correctional education was undertaken for the purposes of: (1) describing the extent and nature of correctional education programs for adult offenders, the extent of participation by adult offenders in educational programs, the nature of educational and vocational counseling and testing, and the administrative structures, budgets, and teaching personnel; and (2) comparing adult correctional education in 1983 with adult correctional education in 1973 and 1977.

Rationale

Focus of Attention

Correctional education for adult offenders has been the focus of considerable attention in the decade since 1973. In the early part of the decade there was a flurry of efforts to develop and implement educational programs for adult offenders. This was a time when the philosophy of rehabilitation was gaining acceptance and had strong advocates. Then the pendulum swung away from rehabilitation toward deterrence and incapacitation. At the same time prison populations were expanding, prisons were overcrowded, budgetary cutbacks were rampant, and the public was calling for punishment. In the early years of the decade between 1973 and 1983, interest in and attention to correctional education were from the perspective of planning and implementing programs; in the waning years of the 1970s, the interest in correctional education was often from the standpoint of questioning the worth of educational programs. As the decade was drawing to a close, once again correctional education was gaining support and interest. Former Chief Justice Warren Burger continues to stand out as a staunch ally, as indicated by his statement that we must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short term benefits -- a winning of battles while losing the war.

Context for the Study

There have been several surveys or evaluations of correctional education in the United States. In a review of the literature on prison education programs, Linden and Perry (1982) found relatively few evaluative studies. The last comprehensive survey of correctional education was made in 1977 (Conrad, Bell, and Laffey, 1978). An earlier national study (Dell'Apa, 1973) included some of the same variables as were included in the 1977 survey.

There is a need for a current evaluation of correctional education in light of the changes that have taken place in corrections in the last decade. Factors that may have impacted on correctional education include court intervention in corrections, budgetary cutbacks and diminishing resources, prison overcrowding, and the change away from a philosophy of rehabilitation to one of deterrence and incapacitation. The extent to which these factors have compounded to impact on correctional education is not known.

It was within this context that this state of the art survey of adult correctional education was undertaken. It was intended that the results of the survey would reveal not only the level of support for and participation in adult correctional education in mid-1983, but also the extent and nature of changes in adult correctional education over the last ten years. It was assumed that this information would be of value to administrators of correctional education programs in planning and implementing correctional education programs in the future.

Definition of Correctional Education

Correctional education is that part of the total correctional process of changing behaviors of offenders through purposefully contrived learning experiences and learning environments. Correctional education seeks to develop or enhance the knowledge, skills, attitudes, and values of offenders (Ryan, 1982). Davis (1978) observed that Ryan's 1970 definition implied a "comprehensive and intensive approach to correctional education, where not only are the basic educational skills provided but equal emphasis is placed on creating a more positive self-image; thus entailing a unified treatment effort" (p. 8). "Correctional education should provide a balanced approach that emphasizes equally the need for personal growth and adequate preparation for life in households, in the market place, and in contributing to the enrichment of community life" (Deppe, 1975, p. 43).

There is consensus that correctional education is comprised of four general categories of educational programs that are found in correctional institutions: adult basic education (ABE), secondary/General Educational Development (GED), vocational training, and postsecondary programs. Bell, et al. (1979) note that there may be a fifth category, social education, ". . . a recent and as yet vaguely defined category which, to a great extent, overlaps and incorporates the other four" (p. 5).

Adult Basic Education (ABE). Adult basic education includes instruction designed to improve literacy, linguistic, and numeracy skills of those who are functionally illiterate and unprepared for implementing the responsibilities of adults while incarcerated or in the free society.

Secondary/General Educational Development (GED). Secondary education is for those who are functioning at the secondary level of achievement. These programs may be provided through regular high school diploma courses, but more commonly they are provided in correctional institutions through GED preparatory programs designed to prepare individuals for taking and passing successfully the General Educational Development Equivalency Examination.

Vocational Training. Vocational education is designed to provide learning experiences to develop occupational awareness, give exploratory job experiences, and develop job skills and work habits in preparation for gainful employment. Vocational training is provided through on-the-job training and related classroom experience.

Postsecondary Education. Postsecondary education includes any college courses, and may be offered through two-year or four-year institutions of higher education. Inmates may gain college credit or may complete requirements for the associate or bachelor's degree.

CHAPTER II

REVIEW OF RELATED LITERATURE

A review of the literature on correctional education for adult offenders reveals a considerable number of studies that have attempted to document the effectiveness of specific programs, either within a single institution or in several institutions within a state. These studies more often than not attempt to draw a relationship between educational programs and recidivism. There have been several studies that have focused on identification of problems or barriers. Some of the studies report inmate participation. A few studies have made surveys nationally.

Literature on Educational Program Effectiveness

The literature is replete with reports of studies designed to prove the effectiveness of educational programs for adult offenders. Some of these studies link education and achievement; others attempt to show the impact of education on recidivism. There has been a continuing debate over the years concerning the effects of education on recidivism. There are continuing efforts to demonstrate a relationship between participation in educational programs and reduced recidivism or successful post-release adjustment and employment. It is generally conceded that the evidence linking participation in education programs and reduced recidivism or post-release adjustment and employment is not conclusive and, at best, only inferential relationships can be hypothesized. Coffey (1982) noted that the impact of correctional education on post-release behavior has yet to be determined and that quality education coupled with work experience and gradual release has not been tested. In a review of the research on effectiveness of prison education programs, Linden and Perry (1982) concluded that although correctional education programs appeared to be relatively common in prisons, the research that had been reported was not conclusive. Linden and Perry (1982) found most of the studies have shown that inmates participating in educational programs make significant improvements in learning, but the impact on post-release employment and recidivism has not been conclusively established.

While accepting the finding that the evidence is not conclusive to show a direct causal relationship between reduced recidivism and participation in educational programs, McCollum (1978) observed that many correctional educators make arbitrary and unnatural distinctions between academic and vocational education, operating under the false assumption that academic education is not job training. This is done despite the impressive research data that establish that a high school diploma and a college degree significantly enhance lifetime occupational earning power.

After conducting a study to determine if variations in the quality of vocational education offered in prisons and skill levels developed by participants in these programs related to post-release adjustment, Lewis and Seaman (1978) concluded that the evidence did not demonstrate a relationship between the prison vocational education program and post-release adjustment of former inmates. Based on their findings, these researchers concluded it is not possible to determine what features of vocational training make it effective. These findings are in agreement with the conclusions of McCollum

(1978), Coffey (1982), Linden and Perry (1982), and others with regard to the lack of conclusive data to demonstrate a causal relationship between correctional education and reduced recidivism.

The literature on the effectiveness of particular correctional education programs is not directly related to this state of the art survey, which was designed to describe the extent and nature of correctional education programs for adult offenders, the availability of testing and counseling, and the administrative structures, budgets, and teaching personnel. No attempt was made to make any qualitative assessments of any of the components of correctional education.

Identification of Barriers to Correctional Education

The Education Commission of the States conducted a three-year national project that identified major issues in adult and juvenile correctional education with implications for policy development (Peterson, 1976). One of the purposes of this project was to identify alternatives to existing educational programs and to correctional practices that detracted from the effectiveness of education for adult and juvenile offenders (Pierce and Mason, 1976).

A national survey by a research team from Lehigh University (Bell, et al., 1979) reported the major problem in correctional education is lack of funding, and this is reflected in the quality of administration, lack of resources, and inability to offer meaningful programs on a continuing basis.

A team from the Syracuse University Research Corporation (Reagen and Stoughton, 1976) visited 38 prisons and 17 central prison system offices in 27 states, analyzed 360 publications, and interviewed or corresponded with over 300 prison experts to gather data providing the basis for identifying problem areas and projecting a model for the future.

Conrad (1981) reported a review of the state of the art in correctional education programs for adult offenders, based on data from interviews with correctional staff and authorities, on-site visits to 12 institutions, and a literature review. The report identified obstacles to correctional education; i.e., lack of funding, staff resistance, and administrative indifference.

Horvath (1982) surveyed correctional education administrators to determine their perceptions of the major problems in correctional education. He found the perceived problems were staff turnover and shortages, inadequate and multiple-source funding, lack of power within the institution, and inadequate space. These problems were essentially the same as those that had been identified in a 1978 survey.

A few studies focused on vocational education problems. A report by the National Advisory Council on Vocational Education (1981) identified the major issues of concern to vocational educators as funding, administration, comprehensive programming, and Federal policy and leadership. The report was developed from testimonies given at four regional hearings in 1979. Carlson (1980) observed that vocational preparation in correctional institutions generally was inadequate; there was little or no coordination of correctional education services at Federal, state, or local levels, and the fragmentation resulted in inadequate funding and disjointed implementation of Federal legislation available to assist correctional institutions in providing educational programs.

A study by Rice, Poe, Hawes, and Nerden (1980) focused on barriers to successful vocational education programs in state prisons. The study identified nine exemplary programs and assessed the variables commonly found in these programs.

Another study in 1980 was conducted by One America, Inc. to describe vocational education programs in nine state correctional institutions for women. This study was designed to identify elements of successful vocational programs and to assess the characteristics, needs, and aspirations of female offenders.

These studies of barriers to correctional education do not relate directly to this state of the art survey. No attempt was made to seek data on the perceived problems of correctional education administrators.

Correctional Education Programs, Enrollment, and Administration

Several studies have been reported that present data from surveys of correctional education programs, enrollment, and administration. The findings of a 1970 national needs assessment of correctional education conducted by Ryan (1970, 1973) are congruent with the results of a national survey made by the Western Interstate Commission for Higher Education (Dell'Apa, 1973). In the early 1970s, there were roughly 11% of the inmate populations enrolled in ABE; 11%, in GED or secondary education; 17%, in vocational education; and 6%, in postsecondary education. There were no significant changes in enrollment from the early 1970s until 1977 when the Lehigh University team made the national evaluation of correctional education, with the exception of postsecondary education (Bell, et al., 1979). In 1970 and 1973, there were 6% of the total inmate populations enrolled in postsecondary education; in 1977, the enrollment had increased to 10%.

Petersilia (1977) analyzed data from a 1974 survey of state prison inmates conducted by the U. S. Bureau of Census involving interviews with 10,000 inmates from 190 state correctional facilities. The data revealed 31% needed vocational training and 68% needed further education. This finding is close to the estimate of McCollum (1978), who reported that out of an average daily population of roughly 400,000 offenders, about 150,000 are detained or serve sentences of such duration that it is not feasible to provide educational programming. The result was that roughly 250,000, or 62.5%, would be potential students for correctional programs.

In a survey of a 100% sample of adult and juvenile correctional institutions in seven southeastern states, involving interviews, site visits, and a questionnaire, it was found that the populations enrolled in vocational education, the types of vocational programs offered, and entry requirements for vocational programs were similar to the rest of the nation (Rice, Etheridge, Poe, and Hughes, 1978).

The Ohio State University National Center for Vocational Education reported a three-part study of vocational education in correctional institutions in which a review of literature was conducted, 34 standards were developed, and 929 facilities were surveyed. The survey indicated that 16% of the inmates who had vocational training opportunities participated in the programs. This is roughly the same percentage participating in 1970, 1973, and 1977 (Schroeder, 1977).

Carlson (1980) reported the results of a national study of vocational education in the correctional setting in order to analyze how much and what kind of vocational education was available for offenders and to assess the impact of Federal legislation on vocational education in correctional institutions. The report presented a profile of the prison population from data compiled from U. S. Department of Justice statistics. The report showed 8% of the population under 20 years of age; 53%, 20 to 30 years of age; and 39%, above 30 years of age. Forty-seven percent were white; 41% were black; 7%, Hispanic; and 5%, other. Fifty percent were convicted of violent crimes; 31%, crimes against property; 14%, drug-related; and 5%, public disorder. Thirty-two percent had 8th grade education or less; 43%, 9th to 12th grade but lacking a diploma or equivalency certificate; and 25%, high school diploma or above.

This survey revealed the larger state institutions offered an average of ten different vocational programs; the smaller institutions, four. The occupations most commonly offered in male institutions were auto mechanics, masonry, carpentry, electrical wiring, plumbing, welding, machine trades, radio and television repair, small engine repair, gasoline engine repair, agriculture, horticulture, barbering, shoe repair, and upholstery. The programs for female offenders in state prisons were found to be home economics/sewing, health occupations/nurse's aide, cosmetology, and business/office/clerical skills. At the time the study was done, eight states had adopted the school district administrative approach. The states were: Texas, Connecticut, Illinois, Maryland, New Jersey, Ohio, Arkansas, and Virginia.

A survey of correctional administrative practices and programs (Pope, 1982) reported eight states out of 38 had established a school district in the corrections agency. These states were: Arkansas, Connecticut, Illinois, Maine, Ohio, South Carolina, Tennessee, and Texas. This study found that eight states out of 38 had designated an agency other than the state corrections agency to provide education. The State Department of Education provided correctional education in Arkansas, Maryland, Michigan, and Vermont. In Oklahoma, the State Department of Vocational/Technical Education provided correctional education; and in Maine, the Department of Manpower Affairs provided correctional education. Kentucky and New Hampshire did not name the agency, but stated it was an agency other than corrections.

Contact, Inc. (1982) gathered information from American and Canadian correctional systems' institutional education programs for inmates. The survey included questions on enrollment in ABE, GED, college classes, education release, and staff. Thirty eight states responded to the survey, reporting on 1981 enrollment data.

The study that most directly relates to this state of the art study was done by the Lehigh University Research team in April, 1977 (Bell, et al., 1979). The National Correctional Education Evaluation Project obtained questionnaire responses from a representative sample of U. S. Federal and state prisons (Conrad, Bell, and Laffey, 1978). Following a literature search and identification of major issues, a random sample of 200 institutions was drawn from a population of 327 state and Federal prisons with at least 100 inmates. There was a response from 163 institutions, with 75% of the respondents located in rural areas. The respondent sample included 131 male, 7 female, and 23 co-correctional institutions. The average population of male institutions was 846; female institutions averaged 118. Twenty representative institutions were visited to assess the validity and reliability of data reported in the questionnaires and to assess environmental and exogenous factors affecting correctional education programs.

The average number of inmates enrolled in educational programs of any kind was 304. Ninety-six percent of the institutions offered adult basic education, with 11% of the inmates enrolled in ABE, including an average of 47 enrolled part-time and 11, full-time.

There were secondary education programs, including high school diploma or GED, at 96% of the facilities, with 12% of the inmates enrolled, including an average of 77, part-time and 37, full-time.

Eighty-nine percent of the institutions offered vocational training, with 19% of the inmates enrolled, including an average of 41, part-time and 58, full-time.

Eighty-three percent of the institutions provided for postsecondary education, with 10% of the inmates enrolled, including an average of 49, part-time and 26, full-time.

Academic and vocational counseling was provided to all inmates by 57% of the respondents; to most inmates, 28% of respondents; to a few inmates, 10% of respondents; and to no inmates, 4% of respondents. The most commonly used tests for ability testing were the Revised Beta (46% of respondents) and the Wechsler Intelligence Tests (22% of respondents). The most commonly used achievement tests were the California Achievement Test (37% of respondents), the Test of Adult Basic Education (35% of respondents), the Stanford Achievement Test (32% of respondents), and the Wide Range Achievement Test (23% of respondents). The General Aptitude Test Battery (GATB) was most frequently used for vocational testing (52% of respondents).

Of the responding institutions, 24% reported regularly utilizing community resources; 65% occasionally used community resources; and 11% never used community resources.

The average number of teachers per institution was 1.4, part-time and 2.0, full-time for ABE; 1.4, part-time and 2.0, full-time for secondary; 1.2, part-time and 5.3, full-time for vocational; and 4.3, part-time and 0.7, full-time for postsecondary.

Of the 159 responding institutions, 36% had from 1 to 5 full-time vocational teachers; 31% had 6 to 15 full-time teachers; and 7% had 16 to 30 full-time teachers. Twenty-eight percent did not report any full-time teachers.

Thirty-two percent reported having no full-time ABE staff and 55% had 1 to 4 full-time ABE teachers. The remaining 13% had 5 to 13 full-time ABE staff. The average number of full-time GED teachers was two. Sixty-one percent of the institutions had 1 to 6 GED teachers; 36% had no full-time GED or secondary teachers.

Information related to funding and administration of correctional education programs showed that the average percentage of the total institutional budget devoted to education was 9%. The average total expenditure per institution for educational programs was $261,201.

The responsibility for administration of correctional education programs was determined by computing the percentage of various agencies involved in administration of the programs. Sixty-nine percent of the institutions reported having functional responsibility for administration; 44% of the State Department of Corrections had functional responsibility; 16% of respondents indicated functional responsibility was in higher education institutions; 9% reported functional responsibility rested with the State Department of Education; 3% indicated functional responsibility was with public school systems; 1% reported functional responsibility was in the State Department of Welfare. It should be noted that these percentages reflect multiple involvement of agencies in the administration of correctional education.

Relation of this Study to Prior Research

The research on correctional education program offerings, enrollment, and administration is limited. The studies that present demographic data are not compatible, and comparisons are difficult to make. Variables are not consistent from study to study. Some studies gathered data from states; others from institutions.

This state of the art study of correctional education took into account the prior research. The study collected data on enrollment as was done by Ryan (1970, 1973), Bell, et al. (1979), and Contact, Inc. (1982). The study collected data on vocational training by enrollment, number of programs, and type of program. Bell, et al. (1979) and Contact, Inc. (1982) investigated enrollment and number of programs. Carlson (1980) identified the kinds of vocational training programs offered in male and female institutions. Bell, et al. (1979) identified the tests used for academic and vocational counseling. Carlson (1980) and Pope (1982) investigated the states having school districts in corrections agencies. Bell, et al. (1979) and Contact, Inc. (1982) collected data on the number of teachers for correctional education. Bell, et al. (1979) investigated the agencies responsible for administration of correctional education and the percent of the total budget devoted to correctional education.

In this state of the art study, data were collected on numbers of ABE, GED, vocational training, and postsecondary programs offered; the kinds of vocational training programs available; the tests used for academic and vocational counseling; the administrative structures; and the budgets for correctional education.

This study most closely relates to the study conducted by the Lehigh University research team in 1977 (Bell, et al., 1979). This study was designed to build upon the prior research, particularly the survey made in 1977 by the Lehigh University research team. It was intended that a comparison could be made on correctional education programs, enrollment, and administration, in order to provide insight into trends and changes taking place in correctional education. This study was done on a much smaller scale than the Lehigh University evaluation of correctional education by virtue of the fact that the resources for conducting the two studies were vastly different. Lehigh University had a sizable grant from the Law Enforcement Assistance Administration, with a team of researchers and support staff. They were able to make site visits in addition to the mail questionnaire. This state of the art survey was conducted without external funding; therefore it was necessary to limit the scope of the study. Data were collected to permit comparisons by enrollment, number of program offerings, tests most commonly used, number of teachers, administrative structure, and funding.

The study did not investigate social education, due to the lack of clarity in defining this program and the content differences in offerings in different states.

Reproduced from U.S. Department of Justice. National Institute of Corrections. Making literacy programs work; volume I: a practical guide for correctional educators. Washington, The Department, 1986. p. 1-6, 162-165.

INTRODUCTION

A growing national concern about the high rates of illiteracy among adult offenders is complicated by conflicting views about the purpose of incarceration. Until fairly recently, the "medical model," introduced in United States prisons some 50 years ago, seemed a more beneficial way to deal with offenders than any method previously tried. At last, it appeared, criminals would no longer be seen as hopeless moral derelicts, but as emotionally sick people whose antisocial behavior derived from psychological, economical, or sociocultural causes. Offenders could be cured, if their disease was diagnosed; at the very least, their behavior could be modified so that they were no longer a danger to society. In its broadest outlines, the medical model satisfied both hard-liners who saw the goal of imprisonment as deterrence, punishment, and incapacitation, and humanitarians concerned about prisoners' rights and the availability of treatment.

By the mid-70s, it became obvious to legislators, criminologists, educators, and the public that prison treatment programs were not turning out responsible, law-respecting citizens. As the economy tightened and the huge postwar generation reached the prison-prone years of young adulthood, an upsurge in crime occurred. In response came a new sense of general anxiety and the "get tough" attitude that prisons should give offenders their "just desserts." The percentage of citizens who thought that the courts should deal more harshly with criminals steadily increased to 83% of those surveyed in 1977. Demands for more rigorous sentencing policies cut across characteristics of gender, race, education, occupation, income, age, region, religion, and political affiliation.

But while some researchers, such as Robert Martinson and Gene Kassebaumental, continued to confirm the "nothing works" idea, people involved in day-to-day prison operations warned of the consequences of using prisons to punish rather than to educate inmates: society would "continue to assure, through default, continued commission of crimes and high recidivism rates." Whatever the quality and effects of correctional education so far, one result could be predicted with certainty: ex-offenders lacking the opportunity to develop new skills would certainly return to their old habits, friends, and trouble-prone lifestyles. Some current statistics on America's prison population attest to the urgent need for such skills:1/

- Research shows a higher incidence of unstable homes among delinquents than among nondelinquents. More likely than not, state prison inmates have grown up in a home with only one parent present or have been raised by relatives. These families typically exhibit a high degree of conflict, instability, and inadequate supervision.
- Violent behavior is linked to childhood abuse and to neurological abnormalities. Violent offenders are more likely to have paranoid symptoms and to display severe verbal deficiencies. Violent offenders are likely to exhibit interpersonal difficulties and behavior problems both in school and on the job.

- About 40% of all jail and prison inmates have completed high school (vs. 85% of 20- to 29-year-old males in the U.S. population).

- The proportion of high school dropouts (those who started but did not complete high school) was about three times larger among the incarcerated.

- Six percent of all inmates have no schooling or only kindergarten. Their rate of incarceration was more than three times that of high school dropouts, the group with the next highest incarceration rate.

- College graduates have an extremely low incarceration rate. Inmates with some college prior to incarceration are more likely than those with less education to have been convicted of a nonviolent offense and less likely to have had a past record.

- Offenders are predominantly male (96%) and disproportionately young (50% under 20 years of age), black (47%), and unmarried (80%), as compared to the general population.

- Most offenders are likely to be poor, since the average unemployment rate for offenders prior to arrest in 1981 was about 40%. Of those who were employed prior to arrest, 80% made less than a poverty-level salary. Twelve percent of those who were employed only worked part-time.

- The typical woman offender is under 30, a single mother with two or more children, economically dependent, and troubled by physical and/or mental ill health and drug and/or alcohol dependency.

- For a significant number of female offenders, a lack of money was a motivating factor in committing a crime, as 60.2% of women inmates are serving time for robbery, burglary, forgery, fraud, or larceny. Prostitution, a crime viewed by some as a "fundamentally harmless economic transaction," accounts for 7.2% of prison admissions and drug offenses for 11.6%.

- It has been estimated that between 10-40% of the adults now incarcerated need special education services because of learning disabilities and other handicapping conditions, although only about 1% received such services in 1984.

Moreover, practitioners stressed, it was premature to write the obituary of education programs; they had never been sufficiently widespread or funded to come alive. Of the $6 billion spent in 1982 to house inmates in local, state, and federal facilities, less than 20% was spent on rehabilitation and training, and much less on educational services for inmates. According to Senator Pell:

> Of the 20%, the amount spent on basic and vocational education is very small; on the average a state spends only 1.5% of its

total correctional budget on inmate education and training programs.

Today, dollars and cents arguments exist for upgrading correctional education services. But it is unrealistic to gauge the success of a program by how many of its graduates "go straight" permanently:

> It sometimes seems as if society expects us to take hardcore criminals with a lifelong record of failure and...in a short period of time turn them into Boy Scouts with college degrees...
>
> Employment, the length of such employment, increased levels of pay and skills, more self-sufficiency, more self-esteem, longer periods of staying away from crime, lesser offenses if crime recurs--all are measures of the "success" of an educational program.[2]

Although support continues for keeping prisoners on a bleak routine, unrelieved by self-development programs, former Chief Justice Warren Burger's concern with the costs and benefits of warehousing prisoners is spreading throughout the criminal justice system. For the past several years, he has frequently stated that the country cannot afford to incarcerate the same people repeatedly without giving them the skills to function outside prison:

> We must accept the reality that to confine offenders behind walls without trying to change them is an expensive folly with short-term benefits--a winning of battles while losing the war.[3]

The Chief Justice further recommends that "every inmate who cannot read, write, and do simple arithmetic" be given that training, "not as an optional matter but as a mandatory requirement."

The purpose in the discussion that follows is not to enter the debate over punishment vs. treatment. Rather, the purpose is to develop two premises:

- Prisons present inherently difficult settings for offering educational services.

- Despite the constraints, compelling reasons exist for providing adult prisoners with up-to-date literacy instruction, and a growing number of programs are effectively managing to do so.

As the academic superintendent of one state prison says: "Providing quality education is a difficult enough challenge in any setting, but educators in a correctional facility confront some special problems which require some special efforts to overcome."

Chief among such challenges, of course, are the students themselves, most of whom enter prison with a history of failure in schools and other institutions, poor self-esteem, emotional and/or drug-related problems, and a lack of social skills. Part of the educational challenge is helping them overcome an initial apathy or even hostility toward education. Success requires convincing them not only of education's practical value but also of their potential for success. Moreover, while most inmates are under-educated, great diversity exists in their learning abilities, social maturity, and functional levels.

Another problem is time. The open-entry/open-exit policy required by the constant flow of inmates into and out of the facility means that a student's participation in an educational program may range from a few months to several years. High rates of turnover prevent the use of a definite time schedule. Accordingly, instructional methods and materials must allow adjustment to such time restrictions. Educational goals must be broad enough to encompass a wide range of ability and need, yet specific enough to ensure success within short spans of time.

Finally, program goals must be cognizant of what is possible within a correctional setting, with its rigidly controlled environment and explicit emphasis on security. Educators must work within their facility's regulatory restrictions and be alert to security demands and adaptable to them.

A number of programs are successfully meeting such challenges. They have not solved all the problems facing correctional educators, and no two programs have the same strengths and weaknesses, but they do share certain fundamental strengths.

TRAINED AND DEDICATED STAFF

At the top of every list of primary strengths are the quality and commitment of a program's staff:

- "Start with an inspired staff and build on it....Our staff is the key to the whole ballgame. They are stable, committed, interested in the inmates, and have high standards of professional competence."

  Educational Director,
  Washington Correctional Center

- "Most of the teachers here are very special. They have the gift of getting through to those who don't want them to."

  Inmate, Buena Vista
  Correctional Facility, Colorado

- "Our teachers have a strong sense of self, like what they're doing, are committed. They know they're not going to get rich but they may help change a few lives."

  Teacher, Lebanon Correctional
  Institution, Ohio

- "The key to a sound program is the preparation and commitment of a growing cadre of excellent teachers."

Educational Director,
Maryland Correctional
Institute at Jessup

ADMINISTRATIVE SUPPORT

Not every educational program can rely on an innovative warden, but successful programs succeed in gaining the support of wardens, superintendents, and other administrative staff:

> "If I have a question or a problem, I can get on the phone and call the regional education administration and I get a direct answer. The supervisors and specialists are very accessible and helpful. You don't feel inhibited talking to them."

Supervisor of Education,
Petersburg Federal Correctional
Institution

COOPERATION OF SECURITY AND GROUP LIVING STAFFS

Closely related to administrative support is the necessary cooperation of prison staff at all levels. An initial resistance and even hostility of security staff toward education programs has been common. Correctional officers may understandably feel that the teacher is interfering, increasing the difficulty of maintaining order and control. Educators who do not manage to bridge this gap may face situations like that described by one program director:

> The captain is only as supportive as he has to be, and when you get down to the lieutenants and sergeants, they are torpedoing the hell out of us. It's like: "Teacher, you've got to put on a flak jacket before you go into the unit; teacher, you have to wait a half hour because we're not ready to send an escort with you; teacher, we don't know where your books are--are we responsible for your books?"

On the other hand, the educational programs highlighted in this report have found various ways to create cooperative relations with security and living staff, even enlisting their support to maximize the effectiveness of educational services to inmates.

A FUNCTIONAL EDUCATIONAL PHILOSOPHY

Effective correctional programs have a cohesive educational focus, a coherent philosophy that teachers believe in, that can guide daily practice.

As the New York Department of Corrections' Academic Programming states: "Without a comprehensive, detailed, and agreed upon statement of philosophy, there can be no consistency of program content, no rational approach to planning, and no logical or comprehensive delivery service."

SOLID BASIC LITERACY PROGRAM

Many prisons do not offer a program designed for inmates at the low literacy level. They may have some tutors or "try to do what they can" for the nonreader, but they lack a formally developed program. The approaches to literacy education described here are characterized by effective basic skills programs for low-level and nonreaders. These programs vary from site to site but typically are individualized, utilizing one-to-one and/or group instruction; use a flexible, often competency-based curriculum; are staffed by trained reading teachers and/or trained tutors; are often supplemented with computers; and are part of an integrated educational program that can advance the nonreader to college level courses if he or she has the time, motivation, ability, and length of sentence that allows for this level of involvement.

This guide was developed as a practical aid to help correctional administrators and educators across the country implement new programs and improve existing programs. It summarizes effective procedures in correctional education for adults. The information presented here is based on the experience of teachers in a variety of effective literacy programs in prisons around the country and on a thorough examination of existing research. The guide begins by reviewing some of the successful programs.

APPENDIX B: THE ROLE OF FEDERAL AND STATE GOVERNMENTS IN CORRECTIONAL EDUCATION

THE ROLE OF THE FEDERAL GOVERNMENT IN CORRECTIONAL EDUCATION

One major problem facing correctional education is the complexity and lack of uniformity within the American correctional system. It has often been pointed out that there is no system of American correctional justice: there are many systems at both the federal and state level, each with its own responsibilities, policies, and practices. Funding for correctional education comes from a variety of federal agencies, including, most importantly, the Department of Education (through a variety of educational programs), the Department of Justice (through the National Institute of Justice and National Institute of Corrections) and the Department of Labor (through its JTPA programs). In fact, because other federal agencies were requested to leave active development of correctional education programs to the Law Enforcement Assistance Administration (LEAA), which was created in the late 1960s--then subsequently weakened by a lack of high-level administrative support--no single agency had been able to provide strong leadership in correctional education programming.

In 1984, the U.S. Department of Education set up an Intra-Departmental Coordinating Committee on Correctional Education to "bring about greater cooperation in the use of existing resources, avoiding duplication of efforts and costs, and effecting a better delivery system for needed services at the Federal, State and Local levels." This committee functions to correct problems in lack of coordination at the federal level. In the past, correctional education administrators had to figure out for themselves what federal money was available and what regulations governed access to the money. The committee, in its bimonthly meetings, is charged with three functions: to provide leadership in federal policy and legislation affecting correctional education through a process of review and recommendation; to coordinate programs within the Department of Education that provide funding or services to correctional education and coordinate with relevant federal agencies; and finally, to promote correctional education research through program evaluation, follow-up studies, demonstration projects, and data collection.

Committee members include representatives from each of the six Assistant Secretaryships administering programs that can provide some service and/or funding to correctional education. These are: Office of Bilingual Education and Minority Languages Affairs, Office of Educational Research and Improvement, Office of Elementary and Secondary Education, Office of Postsecondary Education, Office of Special Education and Rehabilitative Services, and Office of Vocational and Adult Education. In addition, the National Adult Literacy Initiative, an initiative of the Secretary, will provide resources and staff to assist in interdepartmental and intergovernmental coordination of literacy activities in correctional facilities.

The major pieces of legislation that currently mandate or permit funding for adult education programs for inmates include the following:

- The **Higher Education Act of 1965** under Title IV, authorizes Pell Grants (formerly basic education opportunity grants (BEOG)) for post-secondary graduate education. A number of other kinds of financial assistance for higher education are also available, including Special Services for Disadvantaged Students. Under Title V, the Teacher Corps operates programs in correctional institutions.

- The **Job-Training Partnership Act** (JTPA) replaced the Comprehensive Employment and Training Act (CETA) of 1973 to provide job training and employment opportunities to economically disadvantaged, unemployed, and underemployed people, including ex-offenders.

- **Chapter I** of the Education Consolidation and Improvement Act (ECIA) funding is available for students through age 21 who have not completed twelfth grade.

- Section 583(b) of ECIA as amended by **P.L. 98-312** mandates funding for Law-Related Education Programs.

- **P.L. 91-230, the Adult Education Act,** encourages the establishment of programs to teach adults basic skills, complete secondary education, and become employable, productive, responsible citizens. Up to 20% of the state allocation may be used for institutionalized adults.

- **P.L. 92-318, Title IV, Part C, the Indian Education Act,** focuses on improving the educational opportunities for Indian adults to attain basic literacy.

- **P.L. 94-142, the Education for All Handicapped Children Act,** provides funding for mentally and physically handicapped students through the age of 21 to be given special educational opportunities within the least restrictive educational environment possible. The law provides for individual education plans to be devised for all handicapped students so that educational content and methods can be matched to their level of skills, needs, and requirements.

- **P.L. 98-524, the Vocational Education Act of 1984,** also known as the Carl D. Perkins Vocational Education Act, replaces an earlier Vocational Education Act and its amendments. Its purpose is to provide assistance in improving vocational education programs so that they are relevant to labor market needs and accessible to all segments of the population, including women, minorities, the handicapped, individuals with limited English proficiency, workers 55 years old or more, and the economically disadvantaged. A **1% Set-aside for Individuals Who are Incarcerated in Correctional Institutions** reserves 1% of the monies available to each state for vocational education and services.

The United States Federal Bureau of Prisons

The area of correctional education where the federal government has provided the most decisive leadership is in the 43 correctional facilities throughout the country that comprise the U.S. Bureau of Prisons. Although federal prisons house a relatively small population (about 34,000 in 1984) in comparison to the total prison population, they have been innovators in educational and administrative policy. In the late 1970s, for example, the Bureau of Prisons established three objectives for its inmate training and education programs:

- That all inmates leaving the federal prison system would be able to read at least at the eighth-grade level (recently raised from sixth-grade level).
- That all inmates with the ability would earn a high school diploma or equivalency certificate by the time they were released.
- That all inmates who did not have work skills would be given training that would qualify them for post-release employment in a relevant, career-oriented occupation.

More recently, the Bureau has established a mandatory literacy policy for inmates who test below the eighth-grade level. These offenders are required to enroll in a literacy program for at least 90 days. They are then encouraged to continue in the program, although enrollment is made optional on the theory that the coercive measures that have been tried in the past have created little student motivation. Yet another innovation in administrative design is to link education with prison work programs (rather than partnering education with treatment, as is usually done). Students who achieve well in the education programs are promoted to higher level and better paying jobs in the prison industries. As employers in the free world have discovered, basing salary increases on educational achievement "has proved to be a strong motivational tool."

THE ROLE OF THE STATE IN CORRECTIONAL INSTITUTIONS

New policies within the Federal Bureau of Prisons often require a long time in filtering down to state-administered prisons because efforts to advise the states about model programs, curricula, and service delivery patterns are fairly recent. Correctional education programming is also sometimes a low priority at the state level, despite vigorous attempts by the federal government to foster increased state responsibility for such programming. State prison systems and even individual institutions within systems vary tremendously from those with highly developed education programs to those with little or no programming in literacy. State authority plays varying roles in different states. In many states, correctional education is directly administered by the state department of education. In such states as Connecticut, Illinois, Maryland, Ohio, South Carolina, Texas, Florida, and Virginia, separate school districts have been established to administer correctional education services, thereby ensuring that they need not compete with other education programs for funding. Elsewhere, joint responsibility for programs is shared by state departments of education, mental health, social service, and corrections. In some states, correctional facilities directly contract for staff and services with a local school district, vocational-technical school, community college, or university. Other state programs are administered by a county or regional facility. (Volume II, Directory of Prison Literacy Programs in the United States, provides details on the structure of correctional education in different states.)

How Can the Federal Government Reform Prisons and Jails in the United States?

Elizabeth Lane
Bibliographer, Government and Law
Library Services Division

March 1989

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INTRODUCTION

This bibliography contains annotated citations to journal articles, books, and government documents on the topic of correctional policies in the United States. Items were drawn primarily from the Library of Congress catalog, the CRS public policy literature database, *Criminal Justice Abstracts*, the National Criminal Justice Reference Service database, the Sociological Abstracts database, and the PsycInfo database. Citations to other bibliographic resources are included throughout this bibliography; these citations are not annotated, and are provided as access points to more detailed resources on particular topics.

The bibliography is divided into four major sections, representing the general debate topic and the three specific resolutions. The first section includes general materials, ranging from books outlining current correctional conditions and policies through articles addressing Federal programs and guidelines for correctional institutions. The second section includes material on prison and jail overcrowding, including descriptions of the effects of overcrowding and proposals for solving overcrowding problems. The third section includes material on violence in prisons and jails; information provided includes books and articles on riots, gangs, and other violence-related topics. Finally, the fourth section addresses the issue of rehabilitation of criminals; these materials cover the topics of work programs, educational and therapeutic programs, and the goals and effectiveness of current and past programs.

The resolutions for this year's debate topic are closely interrelated; debaters are therefore encouraged to study the materials in all categories. Some examples of overlap include the effect of overcrowding on violent behavior; the effect of rehabilitation programs such as work release, furloughs, and probation on crowded conditions; the impact of privatization of corrections on overcrowding; the role of the Federal government in providing assistance to State and local agencies in areas of corrections; and the effect of alternatives to incarceration upon crowded conditions and successful rehabilitation.

This bibliography is not intended to serve as a comprehensive list of all resources in the field of correctional reform. It is merely an introductory guide to materials available on the debate topics. Many of the items included in this bibliography include footnotes or their own bibliographies; these can be effective tools for finding supplementary material. More information on all of these subjects can be obtained through library research; a CRS-prepared research guide follows the bibliography, with basic instructions for finding additional material. Search terms and strategies for research are provided in that guide, as are descriptions of basic resources for information retrieval. In addition, the research guide includes citations to reference sources in the areas of criminal justice and corrections.

I. U.S. CORRECTIONAL POLICIES

A. GENERAL MATERIALS

American Correctional Association.
Public policy for corrections: a handbook for decision-makers. College Park, MD, The Association, 1986. 79 p.
A compendium of ACA policy statements on 21 correctional issues, prepared by the ACA's Public Correctional Policy Project between 1983 and 1985.

Bender, David L.
America's prisons: opposing viewpoints. 3rd. ed. St. Paul, MN, Greenhaven Press, 1980. 143 p. (Opposing viewpoints series)
Presents opposing viewpoints about prison issues. Includes critical thinking skill activities and a list of organizations to contact.

Breed, Allen.
The state of corrections today: a triumph of pluralistic ignorance. Criminal law bulletin, v. 23, no. 3, 1987: 262-274.
Calls for independent, nongovernmental organizations to exert strong leadership in upgrading corrections and providing long-term policy development and support.

Carlson, Norman.
Bureau of Prisons Director Carlson discusses crime, sentencing, punishment. Third branch, v. 17, July 1985: 1, 4-7.
"In a wide-ranging Third Branch interview, Mr. Carlson discusses expansion of the federal prison system, judicial interest in prison conditions, theories of punishment, employment behind bars, and determinate sentencing."

Conrad, John.
Corrections and its constituencies. Prison journal, v. 64, no. 2, 1984: 47-55.
Asserts that the constituency for American corrections is narrow, specialized, and seldom influential, and that the public has never taken much interest in corrections innovations or performance. Contends that a strong and durable constituency cannot be built, and that it is naive to persist in efforts to establish one because correctional systems are unrelated to citizens' personal interests. Concludes that administrators and reformers have much to gain through cooperation since corrections can make its case stronger if it can meet its critics with understanding, tolerance, and collaboration.

Correctional standards supplement: January 1986. [College Park, MD] American Correctional Association, 1985. 111 p.
One of a series of updates to the second edition of Standards for Adult Correctional Institutions, published by the American Correctional Institution and the Commission on Accreditation for Corrections.

Flanagan, Timothy. Caulfield, Susan.
Public opinion and prison policy: a review. Prison journal, v. 64, no. 2, 1984: 31-46.
Examines a series of polls on American public opinion on prison issues, starting with a 1967 Louis Harris survey and finishing with a 1982 ABC news poll. Finds that many gaps exist in our knowledge of public opinion about prison policy. The data suggest a public mood emphasizing, in a sophisticated way, the goal of preserving public safety rather than pursuing punitive measures.

Fox, Vernon.
Correctional institutions. Englewood Cliffs, NJ, Prentice-Hall, 1983. 320 p.
"The purpose of this book is to present a much needed comprehensive view of all correctional institutions, including their historical development, physical plants, and programs and the residents that they service; their administration and management; and their future."

Haas, Kenneth C. Alpert, Geoffrey P., eds.
The dilemmas of punishment: readings in contemporary corrections. Prospect Heights, IL, Waveland, 1986. 430 p.

Includes 27 previously published and unpublished essays and studies of punishment, prisons, and prison reform.

Contents.--Who goes to prison?--The realities of prison life.--The courts and corrections.--The rehabilitation debate: the survival of treatment.

Inverarity, James. McCarthy, Daniel.

Punishment and social structure revisited: unemployment and imprisonment in the United States, 1948-1984. Sociological quarterly, v. 29, no. 2, 1988: 263-279.

Shows that recent studies confirm the hypothesis that unemployment affects imprisonment roles directly when crime is held constant. Notes, however, that these studies failed to address alternative explanations adequately.

Jacobs, James B.

New perspectives on prisons and imprisonment. Ithaca, NY, Cornell University Press, 1983. 241 p.

"The twelve essays in this volume represent my efforts to produce a sociological history of the American prison since approximately 1960. This book is offered as a serious step toward an integrative social analysis of contemporary American prisons."

Johnson, Robert.

Hard time: understanding and reforming the prison. Monterey, CA, Brooks/Cole Pub., c1987. 200 p. (Contemporary issues in crime and justice series)

Includes bibliographies and index.

Review and essay portray the pain inflicted on inmates in the maximum security prison. Includes sections on the history of prisons and patterns of adjustment, and a proposal to improve adjustment to imprisonment.

Kaiser, Gunther.

Prison systems and correctional laws: Europe, the United States and Japan: a comparative analysis. Dobbs Ferry, NY, Transnational, 1984. 224 p.

Reviews the legal foundation for corrections; correctional goals and responsibilities; prisoners' legal rights and judicial review of correctional measures; the system and organization of corrections; employment and advanced training, assistance, treatment, and aid to released prisoners; and evaluation and developmental tendencies in 14 western and socialist European countries, the United States, and Japan.

Langan, Patrick A.

The prevalence of imprisonment. Washington, U.S. Bureau of Justice Statistics, 1985. 12 p.

"With this study, the Bureau of Justice Statistics introduces a new statistical indicator measuring the use of imprisonment as a sanction for crime. The prevalence of imprisonment indicator, along with the annual count of prison inmates, gives a comprehensive portrait of the American prison system in both static and dynamic terms . . . . The findings of this study question some widely held beliefs about prisons, about deterrence, and about incapacitation. The fact that so few criminals go to prison relative to the large volume of serious crime convinces many that prisons cannot possibly have much of a deterrent or incapacitative effect on crime. Assessing the States' use of imprisonment in dynamic terms, however, reveals that the proportion of the Nation's population affected by imprisonment is higher than might previously have been realized. Moreover, it suggests that the deterrent and incapacitative potential of prison may be larger than previously thought."

Lauder, Ronald S.

Fighting violent crime in America. New York, Dodd, Mead, c1985. 241 p.

Contents.--Crime today.--The business approach.--The subteen criminal.--Juvenile predators: thirteen to seventeen years old.--Juveniles and the courts.--Locking up juveniles: the search for alternatives.--The adult criminal.--Prisons and other options.--Women and violent crime.--Victims and restitution.--Volunteers.--Preventions and costs.--Closing arguments.--Bibliography.

Liston, Robert A.

The edge of madness; prisons and prison reform in America. New York, F. Watts, 1972. 149 p.

Attempts "to describe the roles of the police and the courts in the corrections system, while focusing on the problems of the prisons and of the men and women in them."

Margolis, Richard J.
Out of harm's way: the emancipation of juvenile justice. [New York] Edna McConnell Clark Foundation, 1988. 54 p.

"Examines the ideologies that have led us to punish our children at an enormous rate: each year, about 450,000 youngsters are consigned to juvenile detention centers and training schools, while another 3000,000 spend some time in adult jails. Reviews the findings of recent research in states--notably Massachusetts and Utah--that are using alternatives to training schools for young offenders, and reports on how these programs are working."

McGee, Richard A.
Prisons and politics. Lexington, MA, Lexington Books, c1981. 161 p.

Author attempts to "help political leaders and their appointees to avoid making the same old mistakes, and to point their steps in more promising directions. If order means regularity, consistency, and peace, the correctional institutions in America today exist in a climate where there is much law, but little order."

McGuigan, Patrick B. Pascale, Jon S., eds.
Crime and punishment in modern America. [Washington?] Free Congress Research and Education Foundation, 1986. 421 p.

"Scholars, political leaders, law enforcement professionals and analysts from the Department of Justice examine the thorny problem of crime, punishment, imprisonment and alternatives to imprisonment."

New York State Defenders Association, Inc.
What prisons do to people. Albany, NY [The Association] 1985. 13 p.

Asserts that the length of sentences and the nature of maximum security imprisonment combine to damage the personalities of prisoners to such an extent that it is unrealistic to expect them to function as autonomous and independent individuals in society after their release. The major factors contributing to this disablement of prisoners include the constant fear of danger and assault, the high degree of isolation, and the various kinds of deprivation found in prison. Regressive types of behavior are resorted to by prisoners in order to compensate and express anger at the deprivations enacted upon them.

Prison struggles. Social justice, v. 15, no. 1, 1988: 1-82.

Special section of this journal includes seven articles on inhumanity, racism, and injustice in the U.S. prison system.

Rocawich, Linda.
Lock'em up: America's all-purpose cure for crime. Progressive, v. 51, Aug. 1987: 16-19.

"In 1987, we lock up so many people every week that, at the end of seven days, our state and Federal prisons hold a thousand more than they did the week before. Fifty thousand more prisoners every year."

Rosenblatt, Jean.
Religious groups and prison reform. Washington, Congressional Quarterly, 1982. 151-168 p. (Editorial research reports, 1982, v. 1, no. 8)

Partial contents.--Growth of Muslims' influence in prisons.--Goals of Chuck Colson's Prison Fellowship.--Overcrowding: target of reform.--Alternatives to incarceration.

Sherman, Michael E.
Imprisonment in America: choosing the future, by Michael Sherman and Gordon Hawkins. Chicago, University of Chicago Press, 1981. 146 p. (Studies in crime and justice)

Contents.--A crossroad in American social policy.--The numbers game.--Two patterns of choice.--Theories and symbols.--The cloudy crystal ball.

Snortum, John R. Bodal, Kare.
Conditions of confinement within security prisons: Scandinavia and California. Crime and delinquency, v. 31, no. 4, 1985: 555-572.

Scandinavian countries have acquired an international reputation for innovative and humane prisons, particularly model prisons that are typically smaller, newer, and open. However, the majority of Scandinavian prisoners are still incarcerated in larger, older, locked prisons that are rather traditional in design. This study compares 16 closed or secure prisons, using four each from Norway, Sweden, Finland, and California. It found that California prisons anchored the negative extreme on most, though not all, of the international comparisons.

Standards for adult correctional institutions. [College Park, MD] American Correctional Association, 1981. 163 p.

Compiled by the American Correctional Association and the Commission on Accreditation for Corrections, this guidebook provides basic standards for the operation of an adult correctional facility.

Strasser, Fred. Coyle, Marcia.

Prisons on the precipice. National law journal, v. 9, Aug. 10, 1987: 50, 52-55.

"By choosing to put so many in prison, America now has pushed its lockup strategy to the point of crisis. This rapidly swelling minority strains the limits of the nations's prison systems. It burdens courts with lawsuits over deteriorating conditions . . . and its racial composition raises serious questions about the way America wages war on crime."

Sutton, John R.

Doing time: dynamics of imprisonment in the reformist state. American sociological review, v. 52, no. 5, 1987: 612-630.

Hypothesizes that the strategic behavior of state officials plays an intervening role in the punishment process that determines the relative salience of reform and social system effects. Finds that reforms such as probation, parole, and indeterminate sentencing legislation introduced discretion into the social control system and allowed official actors greater freedom to adjust their behavior to shifting bureaucratic and political constraints.

U.S. Bureau of Justice Statistics.

Report to the nation on crime and justice. 2nd ed. Washington, U.S. Bureau of Justice Statistics, 1988. 134 p.

Presents a compilation and analysis of national research data to provide a comprehensive picture of crime and criminal justice in the United States.

U.S. Bureau of Prisons.

Corrections: a bibliography. Washington, Federal Bureau of Prisons Library, 1973. 17 l.

U.S. Dept. of Justice. National Institute of Justice.

American prisons and jails. [Washington, G.P.O.] 1980. 5 v.

Vol. I: Summary findings and policy implications of a national survey.--Vol. II: Population trends and projections.--Vol. III: Conditions and costs of confinement.--Vol. IV: Supplemental report--case studies of new legislation governing sentencing and release.--Vol. V: Supplemental report--adult pre-release facilities.

U.S. General Accounting Office.

Administration of justice: assistance to State/local governments for fiscal years 1986 and 1987. Mar. 2, 1988. Washington, G.A.O., 1988. 73 p.

"GAO/GGD-88-53FS, B-230408"

Identifies the specific types and amounts of Federal assistance to State and local governments in the administration of justice area.

U.S. Office of Technology Assessment.

Criminal justice, new technologies and the Constitution: special report. Washington, G.P.O., 1988. 54 p.

"OTA-CIT-366, May 1988"

"Articles I and III of the Constitution and four of the ten amendments in the Bill of Rights address the rights of those suspected, accused, or convicted of crime. This report . . . looks at new technologies used for investigation, apprehension, and confinement of offenders, and their effects on the constitutional protection of these rights."

Weiss, Ann E.

Prisons: a system in trouble. Hillside, NJ, Enslow, c1988. 160 p.

Discusses the current prison system and such problems as arbitrary sentencing, overcrowding, and the treatment of juvenile offenders.

White, Janice W.
Bibliography of United States Government documents on crime, correction, punishment, and rehabilitation. Eunice, LA, Louisiana State University at Eunice, 1974. 16 l.

Yoder, John C.
Corrections: establishing our priorities. Federal Bar news & journal, v. 30, Apr. 1983: 230-235.
"Mushrooming prison population in the United States will make corrections a timely issue in the 98th Congress . . . . A number of observers agree that overcrowding has brought prison conditions to a boiling point."

B. HISTORICAL PERSPECTIVE

Bair, Karen.
A 196-year push to make prisons work. Scholastic update, v. 119, Feb. 9, 1987: 16-17.
"Since 1790, Americans have been experimenting with prisons, trying to find a goal for them beyond punishment. Why have these experiments led to a prison system that satisfies no one?"

Bowker, Lee H.
Crime and the use of prisons in the United States: a time series analysis. Crime & delinquency, v. 27, Apr. 1981: 206-212.
Research using two sets of time series data finds a positive relationship between crime and imprisonment in the United States. Suggests that these findings offer support for a moratorium on prison construction.

Conrad, John P.
Return to John Augustus. Federal probation, v. 51, Dec. 1987: 22-27.
Argues that despite the "nothing works" verdict on probation and parole, the only hope of dealing with the prison population explosion is the vigorous development of intensive models of field corrections. Author asserts that it is necessary to revive the original approach of John Augustus, applied in the nineteenth century, in which probation was essentially benevolent.

O'Leary, Vincent.
Probation: a system in change. Federal probation, v. 51, Dec. 1987: 8-11.
Asserts that in the field of corrections, demands for fundamental reform have been advanced by conservatives and liberals alike. Traces the history of calls for change in such areas as sanctioning goals and granting discretionary prison release.

Rickard, Graham.
Prisons and punishment. New York, Bookwright Press, 1987. 27 p.
Examines changing methods of punishment through the ages, current methods of punishment such as fines and prison sentences, and likely future developments.

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Penitentiaries and Corrections.
The role of prisons in society. Hearings, 95th Congress, 1st session. Oct. 5-6, 1977. Washington, G.P.O., 1978. 132 p.
Includes testimony from "a wide spectrum of academicians, sociologists, and those involved with the day to day problems of prisons, about what they believe to be the proper function of prisons in our society."

C. PURPOSE OF CORRECTIONAL POLICIES

Andersen, Kurt.
What are prisons for? Time, v. 120, Sept. 13, 1982: 38-55, 57-58.
Argues that prisons are "no longer for rehabilitation, but to punish--and lock the worst away." Includes a section of photographs by Neil Leifer and a portrait of a prisoner by Roger Rosenblatt.

Conrad, John P., ed.

The future of corrections. Prison journal, v. 67, no. 2, 1987: 1-94.

A special issue of the journal, the second commemorating the 200th anniversary of the Pennsylvania Prison society, includes 13 articles on the future of corrections over the next 25 years.

Doble, John.

Crime and punishment: the public's view. [s.l.] Public Agenda Foundation, 1987. 40 p.

Assesses public opinion about crime and corrections in a report prepared for the Edna McConnell Clark Foundation.

Kennedy, Daniel B. Kelly, Thomas M.

The swinging pendulum of correctional reform. Criminal justice review, v. 6, spring 1981: 44-47.

"Criminal justice professionals as well as the general public are urging a return to fixed prison sentences, thereby undoing the efforts of twentieth century reformers to rely on the indeterminate sentence for rehabilitation purposes. This movement is related to contradictory ideas concerning: (a) the purpose of the criminal justice system; (b) particularism versus universalism; and (c) the proper role of discretion in the administration of justice. The polarities inherent in each issue place society in a double approach-avoidance conflict situation which explains the pendulum movement of correctional policy. By seeking a middle-ground such as is offered by sentencing to community service, the search for a more just system may be enhanced."

Protection and correction: the tough choices. State government news, v. 30, Nov. 1987: 5-13, 16, 18-21.

Contents.--The criminal among us, by Dag Ryen.--Jail reform.--Bringing jails up to standards, by Gov. Martha Layne Collins.--Criminal sentencing reform, by Charles G. Brown.--Private prisons, by Judith C. Hackett.--The ultimate correction, by Dag Ryen.--Sentencing: new federal guidelines, by George E. MacKinnon.

Zedlewski, Edwin W.

When have we punished enough? Public administration review, v. 45, Nov. 1985: 771-779.

"The analysis here suggests that greater social benefits are derived from prison incarceration than are usually assumed; it indicates overwhelming support for more prison capacity. The case for current use of probation and fines is less clear, since less data are available on the application of these sanctions. It, nonetheless, appears that social costs would be reduced if more probationers were given either prison terms or fines. This analysis also indicates that punitive fines for first offenders would have a deterrent effect and would reduce expenditures on prison supervision, while producing revenues and perhaps compensating victims."

D. PRIVATIZATION OF CORRECTIONS

Babcock, William G., ed.

Corrections and privatization: an overview. Prison journal, v. 65, no. 2, 1985: 1-121.

Collection of essays examines the increasingly influential role of the private sector in providing correctional services, including the private financing and operation of jails and prisons.

Becker, Craig. Stanley, Amy Dru.

The downside of private prisons. Nation, v. 240, June 15, 1985: 728-730.

"Private corrections originated in institutions where the line between dependence and deviance, between care and punishment, is blurred: halfway houses, juvenile facilities and detention centers for illegal aliens. Now, however, private institutions incarcerate adult offenders serving long-term criminal sentences. That threatens the civil rights of prisoners as well as the power of citizens to influence penal power."

Bowditch, Christine. Everett, Ronald S.

Private prisons: problems within the solution. Justice quarterly, v. 4, no. 3, 1987: 441-453.

Advocates of prison privatization argue that private industry could operate facilities more efficiently. Warns that consideration must be given to the risks of prison expansion driven not by crime rates or punishment theories but by profit motives.

Brakel, Samuel Jan.
'Privatization' in corrections: radical prison chic or mainstream Americana? New England journal on criminal and civil confinement, v. 14, no. 1, 1988: 1-40.

Defends privatization of corrections, claiming that private sector participation in corrections is not a new and threatening development, but has been a fact of national life since its beginning.

Cikins, Warren I.
Privatization of the American prison system: an idea whose time has come? Notre Dame journal of law, ethics & public policy, v. 2, winter 1986: 445-464.

Article summarizes the advantages and disadvantages of privatizing prisons, concluding that "privatization should be permitted to proceed slowly and cautiously. The process is complicated, as many obstacles still exist."

DiIulio, John J., Jr.
Prisons, profit, and the public good: the privatization of corrections. Huntsville, TX, Sam Houston State University, 1986. 6 p. (Research bulletin no. 1)

Argues that enthusiasm for privatization will ebb if private firms assume a broader share of the nation's correctional workload. Author asserts that extensive privatization would create a 2-tiered workload where managers in the public sector would have an unwelcome monopoly on the worst facilities and the most troublesome prisoners.

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Private prisons. Washington, National Institute of Justice, 1988. [4] p. (Crime file study guide)

Outlines the major developments and issues that underlie the current debate on the privatization of correctional facilities. Includes discussion questions and bibliographic references.

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What's wrong with private prisons. Public interest, no. 92, summer 1988: 66-83.

Appraises private and public prison systems, giving some history of private ventures and citing the success story of the Federal Bureau of Prisons. Claims that public penal institutions vary in quality according to administration but that prison authority must remain in the hands of the government.

Donahue, John D.
Prisons for profit: public justice, private interests. Washington, Economic Policy Institute, c1988. 32 p.

"Are private prisons a good idea? Probably not. The evidence on potential cost savings is too weak and too questionable to warrant so radical and risky an experiment. There seems to be little room for major technical innovations in locking people up, while meeting the standards of humane incarceration . . . . The cost of labor, moreover, which comprises about three-fifths of total prison budgets, probably cannot be reduced much without lowering the quality of the workforce."

Durham, Alexis M., III.
Evaluating privatized correctional institutions: obstacles to effective assessment. Federal probation, v. 52, June 1988: 65-71.

Considers some of the hazards associated with the evaluation of privately operated correctional institutions. Concludes that the costs of dealing with these problems may offset the economic advantage of private sector involvement.

Ellison, James W.
Privatization of corrections. Cumberland law review, v. 17, no. 3, 1986-1987: 683-729.

Defends the privatization of correctional facilities as a constitutional means of reducing overcrowding and idleness in public correctional facilities. Concludes that private correctional services are not intended to replace the public penal system; public policy must incorporate the best of both systems.

Evans, Brian B.
Private prisons. Emory law journal, v. 36, winter 1987: 253-283.
"Comment will advance various arguments in favor of private prisons, concluding that the potential benefits are great enough to justify at least an experimental implementation of the concept."

Field, Joseph E.
Making prisons private: an improper delegation of a governmental power. Hofstra law review, v. 15, spring 1987: 649-675.
Comment argues "that the recent trend of privatization in the area of corrections is a violation of the nondelegation doctrine."

Gentry, James Theodore.
The Panopticon revisited: the problem of monitoring private prisons. Yale law journal, v. 96, Dec. 1986: 353-375.
Comment "proposes a set of monitoring devices designed not only to guarantee that conditions in private prisons will be no worse than those prevailing in public facilities, but to harness existing private motivations to generate improvements in prison quality."

Hackett, Judith C.
Issues in contracting for the private operation of prisons and jails. Lexington, KY, Council of State Governments, 1987. 169 p.
Analyzes reports from 22 U.S. states and interviews with officials in 9 state and local jurisdictions that have contracted for the management and operation of secure, correctional facilities. Finds that initial contract operations have been reasonably successful from the point of view of government officials, but it is not clear they have been profitable for the contractors.

Harms, Kenneth J. Allen, W. Frank.
Privatizing prisons. American city & county, v. 102, Aug. 1987: 29-30, 32-34.
"Contracting raises a host of legal, quality and liability questions, but the private sector already is providing a variety of services for correctional facilities."

Holley, Cathy E.
Privatization of corrections: is the State out on a limb when the company goes bankrupt? Vanderbilt law review, v. 41, Mar. 1988: 317-341.
"Considering the number of unanswered issues associated with privatization, a state should not privatize without grasping the magnitude and complexity of these problems. These issues should be addressed before privatization occurs, when sufficient time is still available to consider alternative solutions. Special interest legislation to amend the Bankruptcy Code is a potential avenue for resolving the bankruptcy issues in the privatization of corrections facilities."

Immarigeon, Russ.
Privatizing adult imprisonment in the U.S.: a bibliography. Criminal justice abstracts, v. 19, Mar. 1987: 123-139.
"The opening section lists materials on the privatization of public services as a whole. Section II concentrates on overviews of the privatization of corrections. Sections III and IV cover the financing and operation of jails and prisons. Section V includes materials relevant to policy and legal issues. Section VI covers privatization in the selected states of California, Florida, Louisiana, Minnesota, New Mexico, North Carolina, Pennsylvania, South Carolina and Tennessee. Section VII lists bibliographies."

Keating, J. Michael.
Seeking profit in punishment: the private management of correctional institutions. Washington, American Federation of State, County, and Municipal Employees, 1985. 54 p.
Review of current proposals for the privatization of correctional institutions argues that state or local governments cannot relinquish legal responsibility for the incarceration of prisoners. Contracting with private entrepreneurs for correctional services creates an inherent tension between a corporation's desire to maximize profits by maintaining maximum capacities, and government efforts to develop possible alternative to incarceration for particular prisoners. Asserts that financial savings would be negated by the government's need to assume the cost of development of contracts, intake and classification of prisoners, risk of potential bankruptcy, and other hidden costs.

Krajick, Kevin.
Prisons for profit: the private alternative. State legislatures, v. 10, Apr. 1984: 9-14.
"Many corporations are convinced that the market for private prisons will grow rapidly this year, and they have begun taking options to lease suitable properties."

Punishment for profit. Across the Board, v. 21, Mar. 1984: 20-27.
Considers "Can private enterprise do a better job of running our prisons than the government?"

Lekachman, Robert.
The craze for "privatization": dubious social results of a Reaganite dogma. Dissent, v. 34, summer 1987: 302-307.
Reviews the "obvious and potential failings" of the "spreading affliction" of privatization, focusing on health facilities and private prisons.

Logan, Charles H.
The propriety of proprietary prisons. Federal probation, v. 51, Sept. 1987: 35-40.
Argues that the authority of the state to imprison is derived from the consent of the governed and may, therefore, with similar consent be delegated to private firms.

Logan, Charles H. Rausch, Sharla P.
Punish and profit: the emergence of private enterprise prisons. Justice quarterly, v. 2, no. 3, 1985: 303-318.
Argues that prison overcrowding, an undersupply of prison space, the high cost of prison construction, and the use of such measure as emergency powers laws to reduce prison overcrowding have forged an environment where the demand for imprisonment outstrips supply and where prices seem unreasonably high. In this context, conditions are ripe for competition and new sources of supply, such as private enterprise prisons.

Mayer, Connie.
Legal issues surrounding private operation of prisons. Criminal law bulletin, v. 22, July-Aug. 1986: 309-325.
Examines the major constitutional and policy questions in privatization of prisons, as well as issues of labor law, delegation, control over use of force and discipline, and liability.

Miller, Jerome G.
The private prison industry: dilemmas and proposals. Notre Dame journal of law, ethics & public policy, v. 2, winter 1986: 465-477.
President of the National Center on Institutions and Alternatives maintains that "a properly fashioned 'private' approach to corrections should focus on filling in that wide spectrum between imprisonment and probation/parole," proposing establishment of "a privately-run, privately-contracted project, for non-incarcerative control of a specific group of felony offenders who would otherwise be incarcerated."

Mullen, Joan.
Corrections and the private sector. Washington National Institute of Justice, 1984. 7 p.
"This Research in Brief summarizes some of the significant findings of The Privatization of Corrections and outlines the issues surrounding the new proposals for private financing, construction, and operation of prisons and jails."

Mullen, Joan. Chabotar, Kent John. Carrow, Deborah M.
The privatization of corrections. Washington, U.S. National Institute of Justice, 1985. 106 p.
Partial contents.--Trends in private sector involvement with prison industries.--Financing alternatives for prison and jail construction.--Contracting for correctional services and facility operations.

Press, Aric.
"A person, not a number." Newsweek, v. 109, June 29, 1987: 63.
"Slowly, private prisons . . . are finding a niche in the United States. The business is still small--there are about 3,000 private adult jail beds in the nation. But that figure will likely double in the next year."

Robbins, Ira P.
The legal dimensions of private incarceration. [Washington] American Bar Association, 1988. 536 p.
"Although the policy aspects of private-prison and private-jail operation have received a great deal of recent attention, there is a dearth of literature on the legal aspects of private incarceration. Not surprisingly, therefore, discussions to date have largely been uninformed, ill informed, or misinformed, since many of the policy questions have important constitutional, statutory, or contractual dimensions. This project was undertaken to present a comprehensive analysis of these dimensions and to provide practical guidance in the form of a Model Contract and Model Statute . . . . The privatization of incarceration may be neither constitutional nor wise. Therefore, this study concludes that, if this critical government function is to be contracted out, it must be accomplished with total accountability. With incarceration, as with all areas of the justice system, we must remain eternally vigilant."

----- Privatization of corrections: defining the issues. Federal Bar news & journal, v. 33, May-June 1986: 194-199.
Examines the relative advantages and disadvantages of privatizing prisons as well as looking at the pertinent case law.

----- Privatization of corrections: defining the issues. Federal probation, v. 50, Sept. 1986: 24-30.
Surveys the issues involved in privatization of prisons. Concludes that "we should not permit the purported benefits of prison privatization to thwart, in the name of convenience, consideration of the broader, and more difficult, problems of criminal justice."

----- Privatization of corrections: defining the issues. Judicature, v. 69, Apr.-May 1986: 325-331.
Article contends that "although something must be done about the sordid state of our nation's prisons and jails, we should not permit the purported benefits of privatization to thwart consideration of the broad, difficult policy questions that are involved."

Sevick, James R. Cikins, Warren J.
Constructing correctional facilities: is there a role for the private sector? Washington, Brookings Institution, 1987. 60 p.
Proceedings of a 1987 seminar on the issues and problems raised by private involvement in prison construction, which was attended by 75 U.S. correctional leaders.

Should prisons be privately run? American Bar Association journal, v. 73, Apr. 1, 1987: 38-39.
Pro and con discussion, with Ira P. Robbins arguing no, and Richard Crane saying yes.

Symposium: privatization of prisons. Vanderbilt law review, v. 40, May 1987: 813-899, 983-1021.
Contents.--Privatization of corrections: defining the issues, by Ira P. Robbins.--The privatization of correctional institutions: the Tennessee experience, by W. J. Michael Cody and Andy D. Bennett.--Tennessee's Private Prison Act of 1986: an historical perspective with special attention to California's experience, by Ward M. McAfee.--The implications of prison privatization on the conduct of prisoner litigation under 42 U.S.C. section 1983, by Susan L. Kay.--Privatization and prisons, by E. S. Savas.--Liability of State officials and prison corporations for excessive use of force against inmates of private prisons, by Donna S. Spurlock.

U.S. Congress. Joint Economic Committee.
Privatization of prison construction in New York. Hearing, 98th Congress, 2nd session, December 5, 1984. Washington, G.P.O., 1985. 28 p. (Hearing, Senate, 98th Congress, 2nd session, S. hrg. 98-1279)
Hearing held in New York State to examine prison privatization efforts and evaluate their feasibility on a nationwide level.

U.S. President's Commission on Privatization.

Privatization: toward more effective government. Washington, The Commission, 1988. 278 p.

Partial contents.--Low-income housing.--Housing finance.--Federal loan programs.--Air traffic control and other FAA functions.--Educational choice.--The Postal Service.--Contracting out: military commissaries; prisons.--Federal asset sales: Amtrak; naval petroleum reserves.--Other programs: Medicare; international development programs; urban mass transit.--Economic public policy and privatization.

Walzer, Michael.

Hold the justice. New republic, v. 192, Apr. 8, 1985: 10-12.

The private prison will expose prisoners to private or corporate purposes, and will set them at some distance from the protection of the law.

Wollan, Laurin A., Jr.

Prisons: the privatization phenomenon. Public administration review, v. 46, Nov.-Dec. 1986: 678-681.

Review article surveys literature on recent trends in prison administration.

E. ALTERNATIVES TO INCARCERATION

Austin, James. Krisberg, Barry.

The unmet promise of alternatives to incarceration. Crime & delinquency, v. 28, July 1982: 374-409.

"A careful review of the research literature on alternatives to incarceration suggests that their promise of reducing the prison population has remained largely unmet. For each of the reform strategies reviewed, the nonincarcerative options were transformed, serving criminal justice system values and goals other than reducing imprisonment."

Balkin, Steven.

Prisoners by day: a proposal to sentence non-violent offenders to non-residential work facilities. Judicature, v. 64, Oct. 1980: 154-164.

Proposes a "new sentencing alternative: non-residential, state-run work facilities."

Ball, Richard A. Huff, C. Ronald. Lilly, J. Robert.

House arrest and correctional policy: doing time at home. Newbury Park, CA, Sage, 1988. 180 p.

An essay and literature review explores the history, current American usage, benefits and costs of home confinement as a correctional option.

Ball, Richard A. Lilly, J. Robert.

A theoretical examination of home incarceration. Federal probation, v. 50, Mar. 1986: 17-24.

"According to the authors, home incarceration has advantages in that it is of easy communicability in terms of present conceptions of social reality, of limited complexity and fairly obvious potential impact, and of reasonable cost. Since it is also characterized by reversibility, divisibility, compatibility, and perceived relevance to organizational goals, it is considered to possess the theoretical advantages necessary to adoption."

Berry, Bonnie.

Electronic jails: a new criminal justice concern. Justice quarterly, v. 2, no. 1, 1985: 1-22.

Discusses the use of electronic anklets or bracelets to detect the whereabouts of offenders assigned to community supervision. Some specific devices are discussed in detail, and the potential uses and problems of electronic monitoring are reviewed.

Brantley, James R.

Alternatives to institutionalization: a definitive bibliography. [Washington] U. S. National Institute of Law Enforcement and Criminal Justice, 1979. 240 p.

Cheatwood, Derral.

Capital punishment and corrections: is there an impending crisis? Crime & delinquency, v. 31, Oct. 1985: 461-479.

"Argues that there are three options that corrections must consider--execution, commutation and concentration, or commutation and dispersal through the inmate population--because it is unavoidable that one of the three will come into being in the near future. The potential systemic effects and external factors that would follow if we were to execute all of these persons, or if we were to reduce their sentences to avoid such a large number of executions, are considered. The conclusion is that one of the more probable scenarios is the enactment of life-without-release statutes in a number of states, and return of a proportion of the death row population to institutions under that provision."

Corbett, Ronald P. Fersch, Ellsworth A. L.
Home as prison: the use of house arrest. Federal probation, v. 49, no. 1, 1985: 13-17.

Argues for greater use of alternatives to imprisonment in response to prison overcrowding, especially the use of home imprisonment as an alternative punishment for middle-range non-violent offenders. Home imprisonment can be used as a sole sanction or as part of an intensive supervision program. Advantages of such a program include cost savings, partial incapacitation, and flexibility.

Czajlowski, Susan M.
Alternatives to incarceration: the community correctional center. Washington, U.S. Bureau of Prisons, 1985. 4 p.

Describes a program in Washington, DC, in which the U.S. Bureau of Prisons began diverting low security prisoners to a Community Correctional Center (CCC). Report discusses the 'typical' inmate, and the function of the program as an alternative to incarceration that provides a rehabilitative aspect.

Davis, Bertha.
Instead of prison. New York, F. Watts, 1986. 128 p. (An Impact book)

Discusses how criminals are charged, sentenced, and incarcerated, the different philosophies and goals behind these measures, and ways criminals are currently rehabilitated outside of prisons.

DelCarmen, Rolando V. Vaughn, Joseph B.
Legal issues in the use of electronic surveillance in probation. Federal probation, v. 50, June 1986: 60-69.

"One proposed incarceration alternative is intensive supervision through the use of electronic devices to monitor offenders. The solution is now technologically feasible and is being used in a few jurisdictions. This article examines the current use of the device and some possible constitutional and legal challenges to its use."

Dodge, Calvert R.
A nation without prisons: alternatives to incarceration. Lexington, MA, Lexington Books, 1975. 264 p.

"*A Nation Without Prisons* provides substantial evidence that there are alternatives for offenders that are more effective than incarceration. It provides judges, legislators, and citizen leaders with examples of the kind of program that can substantially reduce prison populations in every state. It says, in effect, that for both youth and adult offenders, there is no compelling reason for imprisonment."

Ford, Daniel. Schmidt, Annesley K.
Electronically monitored home confinement. NIJ [National Institute of Justice] reports, no. 194, Nov. 1985: 2-6.

Reports on "the use of electronic and computer technology to monitor offenders placed on house arrest or in community corrections programs. Through electronic monitoring devices, officials can verify that an offender is at home or in a community correctional center during specified nonworking, curfew hours."

Friel, Charles M. Vaughn, Joseph B. DelCarmen, Rolando.
Electronic monitoring and correctional policy: the technology and its application. Washington, G.P.O., 1987. 72 p.

Addresses the types of electronic monitoring equipment currently available for supervising offenders, the legal and constitutional issues associated with its use, and suggested guidelines for operating an electronic monitoring system.

Garey, Margot.
The cost of taking a life: dollars and the sense of the death penalty. U.C. Davis law review, v. 18, summer 1985: 1221-1270.
Note finds that "the execution process costs more than imprisoning a person for life" and examines the ramifications of the death penalty for the criminal justice system.

Greene, Richard.
Who's punishing whom? Forbes, v. 141, Mar. 21, 1988: 132-133, 136.
"The U.S. is now paying a heavy--and, it may be, ultimately unaffordable--price for putting criminals behind bars. Here, a report on some promising alternative."

Harris, M. Kay.
Community service by offenders. Washington, U.S. National Institute of Corrections [1980]. 87 p.
"This report is intended to serve as a primer on the concept of community service orders as an alternative criminal justice sanction. In these days of limited fiscal resources available to corrections and severe prison overcrowding, it is essential that legislators, judges, and criminal justice officials consider community-based sanctions for those offenders who can safely remain in the community.

Harris, Philip W. Harland, Alan T.
Sentencing alternatives: development, implementation issues and evaluation. Judicature, v. 68, Dec. 1984-Jan. 1985: 210-219.
"Without well-defined aims and a carefully thought out process of implementation, it is difficult to determine whether or not sentencing alternatives 'work.'"

Heijder, Alfred.
Can we cope with alternatives? Crime & delinquency, v. 26, Jan. 1980: 1-9.
"Proposals for alternatives to prison seldom confront many of the problems that the introduction of alternatives in the criminal justice system entails . . . . A major reform, which meets all reasonable requirements of a liberal system of criminal justice, would be to shorten all prison sentences considerably. The usefulness of this alternative deserves careful consideration."

Hillsman, Sally T. Sichel, Joyce L. Mahoney, Barry.
Fines in sentencing: a study of the use of the fine as a criminal sanction. Washington, G.P.O., 1984. 328 p.
"The study recommends experimentation with this approach in American courts. More generally, the study recommends a fresh look at laws and practices affecting the use and enforcement of fines and other monetary sanctions, with a view to development of a more consistent overall approach that will (1) provide expanded sentencing options; (2) reduce reliance on short-term jail sentences; and (3) better meet the needs of crime victims."

Hofer, Paul J. Meierhofer, Barbara S.
Home confinement: an evolving sanction in the Federal criminal justice system. Washington, U.S. Federal Judicial Center, 1987. 73 p.
Examines the evolving sentencing option of home confinement within the target framework of sentencing policy. Suggests that the U.S. Sentencing Commission should consider returning to the model proposed in its January 1987 draft guidelines, in which home detention could substitute for up to 6 months of imprisonment.

Houk, Julie M.
Electronic monitoring of probationers: a step toward big brother? Golden Gate University law review, v. 14, Mar. 1984: 431-446.
Article concludes that electronic monitoring of probationers may be too high a price to pay for probation, noting that electronic surveillance in its most intrusive form has been likened to the 'general searches' which are at the root of Fourth Amendment protection. Author finds that while these systems may not appear to constitute a great intrusion into the personal privacy of the probationer, it does not appear that they promote the probation goals of rehabilitation and public safety. However, she finds that they may achieve these goals when used in conjunction with narrowly tailored objectives directed at a particular probationer.

Huls, Mary Ellen.
Alternative sentencing, 1979-1984: a selective bibliography. Monticello, IL, Vance Bibliographies, 1985. 10 p. (Public administration series: bibliography P 1625)

Hurwitz, Jeffrey N.
House arrest: a critical analysis of an intermediate-legal penal sanction. University of Pennsylvania law review, v. 135, no. 3, 1987: 771-811.
Addresses legal and policy questions raised by the use of house arrest in the U.S. Concludes that judges and probation departments must carefully tailor the conditions of house arrest to ensure minimal intrusion on the offenders constitutional rights, and service of both rehabilitative and retributive goals.

Immarigeon, Russ.
Community service sentences pose problems, show potential. Journal of the National Prison Project, v. 10, 1986: 13-15.
Finds little evidence that, in its brief history, community service sentencing has been used as an alternative to imprisonment.

Surveys reveal broad support for alternative sentencing. Journal of the National Prison Project, v. 9, 1986: 1-4.
Finds that current research suggests public education can increase public support for alternatives to confinement.

Kellogg, Frederic R.
Making criminals pay: a plan for restitution by sentencing commissions. Federal probation, v. 46, Sept. 1982: 12-15.
The author "writes that the recent controversy over the insanity defense has focused public doubt over the criminal justice system. It highlights the need not for further tinkering but for wholesale reform. This recent proposal would classify offenses according to harm and enforce restitution in every case. It would sweep away the entire uncoordinated panoply of postconviction proceedings and replace them with a well-staffed sentencing commission of experienced trial judges whose assignment would be to assess the harm done by the offender and collect judgment to repay the victim and the state."

Lacayo, Richard.
Considering the alternatives: crowded prisons spark less confining punishments. Time, v. 129, Feb. 2, 1987: 60-61.
Describes new initiatives in alternatives to incarceration that have been developed and adopted as a response to over-crowding in prisons and jails.

Laven, Roger J.
Community-managed corrections and other solutions to America's prison crisis. College Park, MD, American Correctional Association, 1988. 145 p.
Advocates reducing the use of incarceration in the U.S., chiefly by placing more nonviolent offenders in expanded community-based programs while maintaining the incarceration of violent offenders.

Maher, Richard J. Dufour, Henry E.
Experimenting with community service: a punitive alternative to imprisonment. Federal probation, v. 51, Sept. 1987: 22-28.
Finds that when used properly community service sentences can punish, provide for reparation, assist in resocializing the offender, and protect the community while minimizing costs.

Mathias, Robert A.
The road not taken: cost-effective alternatives to prison for non-violent offenders in New York State. New York, Correctional Association of New York, 1986. 70 p.
Asserts that significant numbers of nonviolent offenders in New York State who were sentenced to prison in 1984 could have been diverted to more appropriate and less costly community punishment without endangering public safety.

McCarthy, Belinda R., ed.
Intermediate punishments: intensive supervision, home confinement, and electronic surveillance. Monsey, NY, Criminal justice press, 1987. 203 p.

Anthology of previously unpublished studies and essays that assess current knowledge about three methods of punishments that are "intermediate" steps between prison and probation.

McFarland, Larry.

Depo-Provera therapy as an alternative to imprisonment. Houston law review, v. 23, no. 3, 1986: 801-819.

Examines the medical and legal viability of treating consenting sex-offenders with Depo-Provera (which reduces testosterone production) as an alternative to imprisonment. Concludes that the treatment must be limited to willing defendants; it is not a permanent solution to the problem of deviant sexuality.

New Jersey Criminal Justice Network. Alternatives Task Force.

Alternative sentencing for corrections: a manual. Trenton, NJ, New Jersey Association on Correction, 1986. 36 p.

Defines and describes a number of alternative disposition options within the New Jersey criminal justice system.

Outside the walls. People, v. 29, Feb. 1, 1988: 22-27.

"With prison space scarce, judges devise new ways to punish crime--from house arrest to public penance."

Paduano, Anthony. Smith, Clive A. Stafford.

Deathly errors: juror misperceptions concerning parole in the imposition of the death penalty. Columbia human rights law review, v. 18, spring 1987: 211-257.

Article contends that "the typical juror at the sentencing phase of a capital trial perceives the imposition of a sentence of 'life imprisonment' to mean there is a good chance that the capital defendant will in fact be released from prison on parole . . . . A juror, then, laboring under the misperception that a sentence of 'life' is a ticket to 'get out of jail free' on parole, feels constrained to vote for a penalty of death."

Parisi, Nicolette.

Combining incarceration and probation. Federal probation, v. 44, June 1980: 3-12.

Discusses "split sentencing" which combines incarceration and probation. Looks at the historical precedents for this procedure, examines the many forms which it takes, and explains the rationale for its use today.

Part-time imprisonment: the legal and practical issues of periodic confinement. Judicature, v. 63, Mar. 1980: 385-395.

Investigates some of the legal and practical implications of periodic confinement, which is also known as intermittent, part-time, partial, non-consecutive, weekend, or night time confinement.

Petersilia, Joan.

Expanding options for criminal sentencing. Santa Monica, CA, Rand Corporation, 1987. 110 p.

"This report was supported by the Edna McConnell Clark Foundation as part of its continuing effort to develop alternatives to prison and reduce our nation's reliance on incarceration. [It] describes a number of new programs that have been developed nationwide to respond to prison and jail crowding."

Exploring the option of house arrest. Federal probation, v. 50, June 1986: 50-55.

Summarizes the characteristics of house arrest programs, currently implemented as a sentencing option in 30 states in the U.S. Asserts that probation's long-term survival may depend on its success in adopting house arrest and other intensive surveillance programs so that it can deal with higher risk offenders in the community.

Granting felons probation: public risks and alternatives. Santa Monica, CA, Rand Corp., 1985. 112 p.

Using results from studies conducted in California, researchers concluded that the criminal justice system needs an alternative, intermediate form of punishment for offenders who are too antisocial for the relative freedom that probation now offers, but not so seriously criminal as to require imprisonment. This sanction would impose intensive surveillance coupled with substantial community service and restitution, and should be structured to satisfy public demands that the punishment fit the crime.

House arrest. Washington, National Institute of Justice, 1988. [4] p.

Outlines the issues underlying the growing popularity of house arrest. Author gives the advantages and disadvantages of this sentencing option. References and discussion questions are included.

Prisoners without prisons. State legislatures, v. 13, Aug. 1987: 22-25.

"Faced with overcrowded prisons and plenty of offenders, states are looking at alternative methods of punishment."

Ross, Robert T. Gendreau, Paul.

Offender change: an effective alternative to incarceration. Ottawa, Canada, Ministry of the Solicitor General of Canada, 1984. 41 p.

Argues that proposals to decrease the use of prison sanctions must be accompanied by correctional initiatives to reduce the criminal behavior of the offenders diverted from prison. The criminal justice system can effect offender change (attitudinal or behavioral change, not personality change) by three methods: environmental design, deterrence, and treatment. Several recommendations are offered.

Rothman, David J.

Incarceration and its alternatives in 20th century America. [Washington] National Institute of Law Enforcement and Criminal Justice, 1979. 76 p.

Partial contents.--The nineteenth-century legacy.--The origins of probation and parole.--The realities of probation and parole.--The progressive prison.--The invention of the juvenile court.--Dispensing juvenile justice.--The fate of the mental hygiene movement.

Ryan, Dennis M.

Criminal fines: a sentencing alternative to short-term incarceration. Iowa law review, v. 68, July 1983: 1285-1313.

Comment examines "the fine as a criminal sanction in the United States, particularly as an alternative to short-term incarceration for less serious felonies."

Scaglione, Fred.

Jails without walls. American city & county, v. 104, Jan. 1989: 32-34, 36, 38, 40.

"Electronic monitoring of prisoners has moved beyond the realm of science fiction and is becoming a well-developed correctional alternative."

Schmidt, Annesley K.

Electronic monitors. Federal probation, v. 50, June 1986: 56-59.

Addresses concerns about the electronic monitoring of offenders that judges, communities, and elected officials must consider in adopting its use.

Whittington, James W.

Adult home detention as an alternative to incarceration. Orange County, CA, Orange County Probation Dept., 1986. 6 p.

Outlines a pilot program and summarizes the design and experiences of 13 home detention programs in Orange County, CA. Finds that among the advantages of the home detention are cost effectiveness and flexibility; among its disadvantages are high initial cost and potential for violations.

F. CORRECTIONAL MANAGEMENT

Allen, Charlotte Low.
The success of authority in prison management. Insight (Washington times), v. 5, Feb. 13, 1989: 8-19.
"Prisons are considered hell-holes of crime and inhumane conditions. Many state facilities are just that, but Federal prisons appear to be clean and quiet, with good food, jobs and recreational programs. One reason the Federal penal system seems to be working better than the states': they have different philosophies and administrative styles. Contrary to traditional U.S. penological thought, federal institutions do not try to rehabilitate. They stress authority not democracy; esprit de corps among the staff; and an inmate work ethic."

Cohn, Alvin W.
The failure of correctional management--revisited. Federal probation, v. 43, Mar. 1979: 10-15.
Enumerates some of the reasons that corrections is in a state of turmoil and that correctional management has failed to bring about innovative programs.

The failure of correctional management--the potential for reversal. Federal probation, v. 51, no. 1, 1987: 3-7.
Points out differences between "pedestrian" and "progressive" correction managers. Notes that among the critical problems confronting correctional administrators are the need to reassess their organizations, create processes for staff accountability, and develop program evaluation strategies.

DiIulio, John J., Jr.
Governing prisons: a comparative study of correctional management. New York, Free Press, 1987. 349 p.
Describes and contrasts the management of inmates in the higher custody level prisons of Texas, Michigan, and California. Finds that the quality of prison life depends more upon management practices than any other variable, and that, given the right administrative conditions, prisons can be improved even in the face of crowding, tight budgets, and polarized inmate populations.

Federal standards for prisons and jails. [Washington] U.S. Dept. of Justice, 1980 [i.e. 1981] [65] p.

Harris, Jean.
Inside story. New York, v. 17, June 13, 1983: 24-27, 29.
"An inmate tells how prisons can work better and cost less."

Reavis, Dick J.
How they ruined our prisons. Texas monthly, v. 13, May 1985: 152-159, 232-246.
Examines "how the federal judiciary and state leadership destabilized the prison system, and why it will be years before the prisons can be returned to a sensible footing." Contends that legal cases such as Ruiz v. Estelle (Texas) have been instrumental in prison reform as well as responsible for the "loss of control" over inmates and for the prisons being on the "brink of disaster."

G. COST OF CORRECTIONS

Carter, Stephen A.
Prisons can cost less. State legislatures, v. 14, Feb. 1988: 22-24.
"With growing numbers of prisoners and the high cost of prison construction, careful planning is needed to build good facilities while keeping costs down."

Cohen, Duffie.
The struggle to cap sky-high prison costs. Scholastic update, v. 119, Feb. 9, 1987: 10-11.
"Why have prison costs risen more than 1,000 percent in two decades? Can the nation afford enough new prisons to end overcrowding? Here's why the cost crunch is producing new ways of keeping convicts out of jail."

Conley, John A.
Economics and the social reality of prisons. Journal of criminal justice, v. 10, spring 1982: 25-35.

"Evaluates the importance of economic forces to the creation and development of the prison in America."

Conrad, John P. Rector, Milton G.
Should there be a moratorium on prison construction? USA today (magazine), v. 107, Jan. 1979: 37-44.

The authors present opposing views on the wisdom of having a national moratorium on the construction of new prisons, jails, and juvenile institutions.

Funke, Gail S.
How much justice can States afford? State legislatures, v. 10, July 1984: 22-29.

"Unlike many countries that use prison as a quick but short-term punishment, the United States leans toward longer sentences. Nationally, average time served has crept up over the last decade, currently exceeding two years."

Harriman, Linda. Straussman, Jeffrey D.
Do judges determine budget decisions? Federal court decisions in prison reform and state spending for corrections. Public administration review, v. 43, July-Aug. 1983: 343-351.

"This paper looks at the budgetary effect of federal district court decisions across the states in the area of corrections. The study shows that (a) courts have affected state spending on prisons, (b) the levels of per prisoner spending in states that have had court cases are, in general, lower than in states that have not experienced prisoner rights litigation, (c) the level of per prisoner spending has not been affected by judicially mandated prison reform because of the steady increase in the prison population."

Lays, Julie.
The complex case of costly corrections. State legislatures, v. 15, Feb. 1989: 15-17.

"One out of every 420 Americans is behind bars today--at a staggering price. Can we afford to be tough on crime?"

Library Information Specialists, Inc.
Alternative financing of jail construction. Boulder, U.S. National Institute of Corrections, 1984. 26 p.

Report describes the new lease/purchase financing method of paying for jail construction. Included are two reprinted articles and two unpublished memoranda describing lease/purchase financing and its relationship to other financing alternatives, the advantage of lease/purchase financing, the sequence of events and time schedule for implementing this method of financing, and the role of different professionals in the financing process.

Moore, John W.
Paying for punishment. National journal, v. 19, Mar. 14, 1987: 612-617.

"Packing prisons in a nationwide crackdown on crime, states find that punishment carries a high price tag, and are seeking new ways to control the overflow."

II. SENTENCING POLICIES AND GUIDELINES

Armstrong, William L.
Prudent use of prison space: the Sentencing Improvement Act. Journal of legislation, v. 11, summer 1984: 237-248.

"The Sentencing Improvement Act reflects an emergent policy consensus among criminal justice professionals, social commentators, economists, and public officials across the country who recognise the necessity of sentencing alternatives."

Berman, Joel J.
Sentencing reform of S. 1437: will guidelines work? Harvard journal on legislation, v. 17, winter 1980: 98-122.

"Crowded prisons and demonstrable recidivism have prompted Congress and state legislatures recently to question the efficacy of rehabilitation in the penal system. Reports of wide disparity in sentencing and undue judicial subjectivity have caused not only lawyers but the prisoners themselves to doubt the equity of an individualized system of sentencing. To meet the problem, Congress introduced S. 1437 in 1978 to establish sentencing guidelines and to decrease the amount of judicial discretion available under the current system. Although the bill died at the end of the 95th session, it was applauded as a welcome attempt at reform . . . . Author suggests in this Note that Congress must outline precise sentencing philosophies and limit sentencing criteria before any new bill can adequately curtail the unwanted judicial discretion possible under current law."

Cassella, Stefan D.
A step-by-step guide to the new Federal sentencing guidelines. Practical lawyer, v. 34, Apr. 1988: 13-23.
"The purpose of this article is to help lawyers understand how the new [sentencing] rules work, and to discuss some likely problem areas that practitioners should watch for. Where appropriate, this article enacted by Congress very recently in the Sentencing Act of 1987."

Cavender, Gray. Musheno, Michael C.
The adoption and implementation of determinate-based sanctioning policies: a critical perspective. Georgia law review, v. 17, winter 1983: 425-464.
Article determines from a historical perspective that "the sanctioning reform modeled around determinate sentencing must be cast as a symbolic tool of social control, appeasing the fears of law-abiding citizens while avoiding a serious investigation of American criminal behavior . . . . [Current] policy is hollow because of the failure to provide resources for implementation, contradictory to penal trends that show a clear movement away from 'brick and mortar' facilities staffed by custodians, and checked by federal court decisions demanding rapid improvement in prison conditions."

Corrothers, Helen F.
Guidelines for the future: the effects of Federal sentencing reform. Corrections today, v. 48, Dec. 1986: 24, 26, 28.
Describes the sentencing reform legislation drafted by the U.S. Sentencing Commission, and explains the effect this legislation is likely to have on courts and corrections.

Criminal sentencing in transition. Judicature, v. 68, Oct.-Nov. 1984: whole issue (124-201 p.)
Partial contents.--Criminal sentencing in transition, by D. Gottfredson.--Sentencing reforms: impacts and implications, by A. Blumstein.--North Carolina's determinate sentencing legislation, by S. Clarke.--Judicial sentencing guidelines: hazards of the middle ground, by D. Carrow.--Maryland's sentencing guidelines--a system by and for judges, by M. Levin.--What sentencing reform in Minnesota has and has not accomplished, by K. Knapp.

Determinate sentencing: reform or regression? Proceedings of the Special Conference on Determinate Sentencing, June 2-3, 1977, Boalt Hall School of Law, University of California, Berkeley. Washington, U.S. National Institute of Law Enforcement and Criminal Justice, 1978. 148 p.
Contents.--Foreword, by Blair G. Ewing.--Introduction, by Sanford H. Kadish.--Conceptual overview and commentary on the movement toward determinacy, by Norval Morris.--California's determinate sentence statute: history and issues, by Sheldon L. Messinger and Phillip D. Johnson.--Sentencing reform and prosecutorial power: a critique of recent proposals for "fixed" and "presumptive" sentencing, by Albert W. Alschuler.--The law and its promises: flat terms, good time, and flexible incarceration, by John P. Conrad.--Issues in the study of criminal code revisions: an analysis of reform in Maine and California, by Frederick A. Hussey and John H. Kramer.--Deceptive determinate sentencing, by Caleb Foote.

Eldridge, William B.
Shifting views of the sentencing function. In The American judiciary: critical issues. Beverly Hills, CA, Sage Publications, 1982. p. 104-111.
"Declining confidence in the rehabilitative model has shifted the functional appraisal of sentencing from assessment of its ability to steer persons into appropriate treatment programs to an assessment of its ability to serve alternative goals of deterrence, incapacitation, and retribution."

Ferry, John.
Issues in sentencing: a selected bibliography. Washington, U.S. Law Enforcement Assistance Administration, 1978. 79 p.

Forst, Brian. Wellford, Charles.

Punishment and sentencing: developing sentencing guidelines empirically from principles of punishment. Rutgers law review, v. 33, spring 1981: 799-837.

Article attempts to develop an "explicit sentencing policy" for Federal criminal courts from principles of punishment, gathered from interviews with Federal judges, attorneys, offenders, and the general public on the goals of sentencing and from an analysis of actual sentencing decisions based on 5,781 Federal presentence reports.

Glaser, Daniel.

Six principles and one precaution for efficient sentencing and correction. Federal probation, v. 48, Dec. 1984: 22-28.

Sets forth "six principles which can maximize the public's longrun protection from known offenders at minimum cost, that all imply penalties sufficient for general deterrence of nonoffenders but diverse reactions to different types of criminals. Contends that successful application of these principles requires careful assessment of both the criminal and the noncriminal past record of each convicted person before sentencing, and if incarceration is deemed necessary, minimum criminalization and maximum retraining during confinement."

Goodstein, Lynne.

Determinate sentencing and the correctional process: a study of the implementation and impact of sentencing reform in three states -- executive summary. Washington, G.P.O., 1984. 76 p.

Report prepared for the National Institute of Justice under contract to Pennsylvania State University assesses the effects of determinate sentencing legislation in Connecticut, Illinois, and Minnesota. Researchers found some slight support for the theory that prisoners sentenced to determinate terms in these institutions perceived that they were treated more equitably in the sentencing process and were more certain of their release dates. No support was found for theories linking determinate sentencing to other areas of prisoner attitudes examined.

Goodstein, Lynne. Hepburn, John.

Determinate sentencing and imprisonment: a failure of reform. Cincinnati, Anderson, 1985. 244 p.

Examines the impact of determinate sentencing on prisoners in Connecticut, Illinois, and Minnesota. Data were collected from self-administered questionnaires completed by inmates at four prisons, and supplemented by open-ended interviews with prisoners, staff, and administrators. No systematic support was found for the theory that determinate sentencing had an impact on prisoner attitudes and behaviors. Determinate sentence prisoners had a slightly lower involvement in rehabilitation programs.

Greenberg, David F. Humphries, Drew.

The cooptation of fixed sentencing reform. Crime & delinquency, v. 26, Apr. 1980: 206-225.

"Criticism of indeterminate sentencing was initially advanced as part of a larger radical program to transform American society. Yet recent sentencing reform legislation legitimated by this criticism has taken on a conservative character. This development is documented . . . and explained in terms of political and social change over the past decade."

Griswold, David B. Wiatrowksi, Michael D.

The emergence of determinate sentencing. Federal probation, v. 4, June 1983: 28-35.

Focuses on an overview of the trend towards determinate sentencing, "types and methods for formulating sentencing guidelines, and future prospects for determinate sentencing."

Grunin, Susan Krup. Watkins, Jud.

The investigative role of the United States probation officer under sentencing guidelines. Federal probation, v. 51, Dec. 1987: 43-47.

Claims that guideline sentencing will bring about a revolution in the work of U.S. probation officers, by profoundly affecting the way pre-sentence reports are prepared by officers and used by courts in imposing sentences.

Hoelter, Herbert J.

Private presentence reports: boon or boondoggle? Federal probation, v. 48, no. 3, 1984: 66-69.

Defends the use of presentence reports prepared by such private agencies as the National Center on Institutions and Alternatives. Contends that private presentence reports can assist in the individualization of criminal sentencing practices, invite reform of current practices, and support the use of probation by developing community-based sanctions. Author cautions that the quality of presentence reports should be the dominant concern of the courts, not their origin.

Hoffman, Peter B. Harydman, Patricia L.
Sentencing reform, sentencing guidelines, and related issues: a partial bibliography. Journal of criminal justice, v. 114, no. 6, 1986: 545-569.

Huls, Mary Ellen.
Criminal justice reform--determinate sentencing: a bibliography. Monticello, IL, Vance Bibliographies, 1985. 10 p. (Public administration series: bibliography P 1624)

Krajick, Kevin.
Abolishing parole: an idea whose time has passed. Corrections magazine, v. 9, June 1983: 32-40.

Looks at states where parole has been abolished to see what effect this has had on sentencing.

Little, Joseph W.
The law of sentencing as public ceremony. University of Florida law review, v. 35, winter 1983: 1-40.

Article "describes the claimed goals of criminal sanctioning. Particular attention will be given to how certain changes have brought an estrangement between the people and the corrections process. Next, current reform proposals are described and analyzed. Finally, the goal of opening up sentencing to public awareness and influence is examined in detail."

Miller, Harold D.
Projecting the impact of new sentencing laws on prison populations. Policy sciences, v. 13, Feb. 1981: 51-73.

"This study develops a methodology for estimating the impacts of alternative sentencing policies on prison populations. The methodology is demonstrated with an estimation of the impacts on the Pennsylvania state prison system of a mandatory-minimum sentencing bill which was considered by the Pennsylvania legislature."

Nagel, Stuart. Levy, Kathleen.
The average may be the optimum in determinate sentencing. University of Pittsburgh law review, v. 42, spring 1981: 583-635.

"This Article uses a nationwide sample of federal criminal cases to deal with the relations between sentence length and subsequent severity of criminal behavior. The results are used to aid in arriving at optimum sentences that minimize the sum of the holding costs and the releasing costs."

Partridge, Anthony.
Changes in prison and parole policies: how should the judge respond? Federal probation, v. 45, June 1981: 15-18.

Argues "that, although sentencing marks the end of a criminal proceeding in the trial court, a sentence of imprisonment is also the beginning of a process presided over by prison and parole authorities. To a substantial extent, the meaning of such a sentence is determined by these authorities. Their policies, therefore, have implications for the performance of the judicial role--both for the duty to select an appropriate sentence and for the duty to ensure procedural fairness."

Pointer, W. Donald. Rosenstein, Cindy
Perspectives on determinate sentencing: a selected bibliography. Washington, G.P.O., 1982. 90 p.

Powell, Scott A.
Sentencing juvenile offenders: societal and legal aspects, a selected bibliography. Record of the Association of the Bar of the City of New York, v. 42, Apr. 1987: 393-401.

Strasser, Fred.
Making the punishment fit the crime . . . and the sentencing budget. Governing, v. 2, Jan. 1989: 36-41.
Describes efforts by state governments to alleviate prison crowding by drafting or revising sentencing guidelines.

U.S. General Accounting Office.
Justice issues. Nov. 1988. Washington, G.A.O., 1988. 20 p. (GAO transition series) "GAO/OCG-89-13TR; B-158195"
"The four issues we believe should be included in whatever agenda Congress and the Attorney General set for the Department of Justice are (1) improving overall departmental management, (2) reassessing the effectiveness of drug abuse control programs, (3) planning for the potentially staggering costs of sentencing reform, and (4) determining whether immigration reform is working."

Weissman, J. C.
Drug offence sentencing practices in the United States of America. Bulletin on narcotics, v. 36, July-Sept. 1984: 27-41.
"The United States criminal justice system, in response to a variety of risks, makes available a range of options to help control drug offenders. Pre-arrest diversion, pre-trial diversion, pre-trial release, probation, split sentencing, work release, incarceration and parole release are alternative dispositions involving a graduated scale of punishment, incarceration, specific deterrence and rehabilitation . . . . Diversion, criminal responsibility, selective incapacitation, trafficking, and cocaine abuse are examined. Guidelines for policy development are recommended and the analysis covers the related concepts of sentencing ideology, decriminalization, and determinate sentencing models."

Wilson, James Q.
Dealing with the high-rate offender. Public interest, no. 72, summer 1983: 52-71.
"It is possible to think sensibly about the uses of prison by asking what kinds of offenders should be sent to what kinds of facilities and for how long, by estimating carefully both the prison-capacity and crime-reduction implications of any proposed sentencing policy, and by avoiding the tendency to think that the best way to handle crime is always to impose the longest possible sentences."

I. JAILS

Goldfein, Josh.
Criminal injustice?: litigation looms over Essex County's jails. New Jersey reporter, v. 18, Feb. 1988: 8-16.
Describes the deteriorating state of the Essex County jails in the State of New Jersey. Several lawsuits have been filed on behalf of the inmates of these jails by the Office of Inmate Advocacy in the Department of the Public Advocate. "None of the parties involved in this circle of finger-pointing and buck-passing denies that the conditions in the jails are deplorable. But the first priority of each party in the dispute seems to be to accuse someone else of dereliction of duty and callous conduct, rather than to demonstrate any ability to solve a public-policy problem. Meanwhile, the inmates of the county jails, most of whom have not even been convicted of (and some not even formally charged with) the crimes for which they are being held, are living in circumstances which are both inhumane and illegal, and the public advocate has urged the court to impose heavy sanctions on the county."

Guynes, R. Grieser, R. C. Robinson, H. E.
Organization and management of jails: an executive summary. Alexandria, VA, Institute for Economic and Policy Studies, 1985. 15 p.
A study prepared for the U.S. National Institute of Justice examines the impact of organization on the management and level of violent incidents in small jails in the U.S. The survey found that the correctional training of the jail manager had a significant relationship to most of the internal management scales, as well as to reduction of assaults, property damage, escapes, deaths, and fires. The size of the jail did not appear to effect these relationships.

Hall, Andy.
Alleviating jail crowding: a systems perspective, by Andy Hall with D. Alan Henry, Jolanta J. Perlstein, Walter F. Smith. Washington, U.S. National Institute of Justice [1985]. 90 p. (Issues and practices / National Institute of Justice)

"Provides an in-depth discussion of the range of options available to criminal justice professionals who can help alleviate jail crowding while safeguarding public safety. The experiences of many jurisdictions demonstrate that such options can be effective in addressing the jail crowding problem. Among the programs and practices discussed are the use of field citations by law enforcement officers in Oakland, California; early screening of charges by prosecutors in Milwaukee, Wisconsin; prompt bail-setting in Mecklenburg County, North Carolina; and practices designed to reduce presentence investigation time by probation officials in Lucas County, Ohio. Other practices discussed include the establishment of system-wide jail population management programs in [several counties]."

Jails. College Park, MD, American Correctional Association, 1981. 29 p. (American Correctional Association monographs; ser. 1, no. 3)

This publication is intended to provide relevant information on jail administration to new managers, and managers training new personnel. Includes two articles: Opening new prisons, jails, and community-based centers, by John T. Milosovich and David Dupree; and The improvement of jail facilities: needs, training, and resources, by Craig D. Dobson.

Jails: intergovernmental dimensions of a local problem; a Commission report. Washington, Advisory Commission on Intergovernmental Relations, 1984. 247 p.

"A-94, May 1984"

Contents.--Jails: an introduction, overview and issues.--Noninstitutional strategies: alternative programs and procedures.--State-local and interlocal relations and local jails.--The Federal role in local jails: from law assistance to law suits.--Findings and recommendations.

Johnson, Judity. McKeown, Keith. James, Roberta.
Removing the chronically mentally ill from jail: case studies of collaboration between local criminal justice and mental health systems. Washington, National Coalition for Jail Reform, 1984. 63 p.

Finds that local jails in the United States are increasingly becoming dumping grounds for mentally ill persons. Recent estimates suggest that 600,000 mentally ill persons are confined in jails every year, and many of these are chronically ill. The crimes these people commit result primarily from an inability to function normally in the community; they do not generally pose a threat to public safety. Deinstitutionalization of the mentally ill and social service cutbacks have contributed to the placement of more mentally ill persons in local jails. The authors assert that the jail experience for these people can be both damaging and life-threatening. Several programs that bridge the mental health and criminal justice systems to divert mentally ill people from jail are reviewed.

Kalinch, David B. Klofas, John, eds.
Sneaking inmates down the alley: problems and prospects in jail management. Springfield, IL, Thomas, 1986. 208 p.

Collection of 13 original essays examining jail management issues. Includes chapters on the functions and social structure of jails; jail-related correctional law; changing prisoner populations; community-jail links; emerging prescriptions for jails; and new perspectives.

Kerle, Kenneth E. Ford, Francis R.
The state of our nation's jails, 1982. Washington, National Sheriffs' Association, c1982. 233 p.

Provides and analyzes the results of a survey of over 2600 sheriffs and jail administrators administered by the National Sheriff's Association. The report is divided into eight parts, covering the following categories: General; Legal; Administrative; Physical description of present jail; Staffing; Inmate population; Programs and services; and The five most serious problem areas in jail in order of their importance. Survey replies are broken down into four sections, based on bed space available in the jail.

Klofas, John.
Patterns of jail use. Journal of criminal justice, v. 15, no. 5, 1987: 403-411.

"Jails continue to be the most neglected component of the criminal justice system. One consequence of this neglect has been that important conceptual issues regarding jails remain unresolved. This study developed a method for describing the patterns of jail use in countries. Using data from Illinois, rates of jail use and the diversity of use patterns were described. The influence of crime rate and county population size on jail use were explored, and jail crowding was examined by focusing on different patterns of jail use. Implications for jail research and policy are discussed."

Lawrence, Richard
Jail educational programs; helping inmates cope with overcrowded conditions. Journal of correctional education, v. 36, Mar. 1985: 15-20.
This study measures inmates' perceptions of conditions in a metropolitan detention center. Results indicate that educational programs can reduce the problems associated with crowded conditions. Correlation analyses indicated significant relationships between participation in educational programs and more positive feelings of inmates, along with a reduction in complaints of headaches.

Moynahan, James McCauslin.
The American jail, its development and growth, by J. M. Moynahan and Earle K. Stewart. Chicago, Nelson-Hall, c1980. 213 p.
Contents.--1. Introduction.--2. Development of the English jail.--3. Houses of correction, workhouses, and later English jail development.--4. Jails in colonial America.--5. Walnut Street jail and the period of change.--6. Nineteenth-century American jails.--7. Jails of the twentieth century.--8. National Jail Census and contemporary jails.--9. Continuing topics for consideration.

Scaglione, Fred.
Jails without walls. American city & county, v. 104, Jan. 1989: 32-34, 36, 38, 40
"Essentially, electronic monitoring adds a high-tech surveillance component to traditional house arrest or probation programs. Offenders are given a schedule allowing them to leave their homes for work, approved counseling sessions, specific shopping periods and religious services . . . . What is news is the extent to which electronic monitoring has grown rapidly beyond the initial stages of applied science fiction to become a well-developed, if not fully mature, correctional alternative."
Includes sidebar on jail funding options.

Symposium: public policy, jails, and criminal justice. Policy studies review, v. 7, spring 1988: 563-681.
Contents.--State-local relations and the American jail crisis.--Dealing effectively with crowded jails: the judges' role.--The uses of jail confinement in three counties.--The work orientation of jail personnel.--Implementing organizational change.--Doing time in the new generation jail.--Rethinking American jail death rates.--Integrating community mental health services into local jails.--A critical assessment of electronic monitoring in corrections.

Wener, Richard. Frazier, William. Farbstein, Jay.
Building better jails. Psychology today, v. 21, June 1987: 40-44, 48-49.
Reports on the authors' evaluation of modern direct-supervision jail facilities.

White, Anthony G.
Jail administration: a recent bibliography. Monticello, IL, Vance Bibliographies [1987] 8 p.

J. FEDERAL CORRECTIONAL PROGRAMS

Gentry, Margaret.
The Reagan corrections program: less money, more States' rights. Corrections magazine, v. 7, Dec. 1981: 29-32, 34-36.
Focuses on actions and proposals of the Reagan Administration in the area of corrections including backing off from prison standards and budget reductions for Federal agencies in this area.

U.S. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice.
Correctional policy. Oversight hearings, 98th Congress, 1st session. February 23 and 24, 1983. Washington, G.P.O., 1985. 567 p.

"Serial no. 88."
Hearings held "to examine the current state of the corrections system at Federal, state, and local levels, and to explore alternative ways for resolving what has been called the crisis of overcrowding in correctional facilities."

Federal prison policy. Oversight hearing, 100th Congress, 1st session. March 5, 1987. Washington, G.P.O., 1987. 151 p.
"Serial no. 10."
"The basic purpose of this hearing is to assess the outlines of Federal correctional policy."

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Juvenile Justice. Federal assistance to state and local enforcement--prisons. Hearing, 98th Congress, 1st session on the status of our nation's prisons with a focus on the appropriate role of the Federal government in building and in supporting the prisons, July 27, 1983. Washington, G.P.O., 1984. 67 p. (Hearing, Senate, 98th Congress, 1st session, S. hrg. 98-550)
"Serial no. J-98-58."

U.S. General Accounting Office.
The Department of Justice can do more to help improve conditions at state and local correctional facilities; report to the Congress by the Comptroller General of the United States. Washington, G.A.O., 1980. 52 p.
"GGD-80-77, Sept. 15, 1980"
"This report discusses the problems State and local prison and jail administrators are having in providing safe and humane environments for inmates. It also discusses the progress some States and localities have made in improving environmental health conditions and recommends ways for Federal agencies to assist."

II. PRISON AND JAIL OVERCROWDING

A. GENERAL MATERIALS

Abell, Richard B.
Passing through for lack of cells. Washington times, Jan. 27, 1989: F1.

In this excerpt from his article in the winter 1989 issue of Policy Review, the author argues that "with too few prison cells, we have created a game of musical chairs that all too often puts the criminal on the wrong side of the wall. In these times of tight-fisted fiscal policy, resources will have to be reallocated if prisons are to be built. But by investing in new facilities, crime's overall costs to society can be lowered."

Anderson, George M.
American imprisonment today. America, v. 146, May 8, 1982: 354-356.

"Prison populations are growing at an alarming rate, and the trend is toward mandatory sentences. The result is overcrowding, which has its effects on the prisoners, the courts and ultimately on public safety."

Angelos, Claudio. Jacobs, James B.
Prison overcrowding and the law. The Annals of the American Academy of Political and Social Science, v. 478, Mar. 1985: 100-112.

The history of prison- and jail-crowding litigation in the Federal courts since the 1960s is traced and analyzed. While prisoners and pretrial detainees have won many victories, the doctrinal basis for constitutional right to uncrowded incarceration facilities remains unclear and is still evolving. Despite several recent Supreme Court decisions unfavorable to inmates, there has been no rejection of the principles that: (1) the totality of conditions in prisons -- including crowding -- must not amount to cruel and unusual punishment, and (2) jail crowding cannot be permitted to impose genuine privations over an extended period of time. In order to enforce the decrees outlawing overcrowding, judges have had to search for creative enforcement techniques, many of which are controversial and whose effectiveness is disputed. The courts have forced the other branches of government to face up to crowded prisons and jails, and they have helped to ameliorate the suffering and deprivations that the overcrowding crisis has caused.

Austin, James.
Too many prisoners. State legislatures, v. 12, May-June 1986: 12-15.

"A costly consequence of cracking down on crime is an overburdened prison system. But new techniques allow legislators to anticipate accurately the crowding that can result from sentencing policies."

Austin, James. McVey, Aaron David.
The NCCD prison population forecast: the growing imprisonment of America. National Council on Crime and Delinquency, San Francisco, 1988. 7 p.

Examines the current state of overcrowding in American prisons, and describes potential consequences if current policies are not revised.

Barry, John R.
Some implications of our crowded prisons. Journal of offender counseling, v. 6, Apr. 1986: 48-51.

Reviews the March 1985 issue of the Annals of the American Academy of Political Science (vol. 478, p. 9-182) in which 18 authors describe and discuss various aspects of the problem of crowding in prisons and jails of the United States.

Blumstein, Alfred.
Prison crowding. Washington, U.S. National Institute of Justice [1986]. 4 p. (Crime file study guide)

Provides a brief introduction to the issue of prison crowding. Includes references and discussion questions.

Prison populations: a system out of control? In Crime and justice: a review of research, v. 10. Chicago, University of Chicago Press, 1988. 231-266 p.

Looks at the dramatic rise in U.S. prison populations in the last fifteen years. Considers factors such as politicization of imprisonment policy and the changing age composition of the population. Examines three approaches to prison crowding: diversion from prison nonincarcerative punishments; shortening of prison sentences; and increasing prison capacity through construction of new facilities.

Blumstein, Alfred. Cohen, Jacqueline. Gooding, William.
The influence of capacity on prison population: a critical review of some recent evidence. Crime & delinquency, v. 21, Jan. 1983: 1-51.
Attempts "to review the empirical evidence that led Abt/Carlson to conclude that the construction of additional prison capacity will be followed two years later by a corresponding increase in prison population, thereby using up that prison capacity."

Brooks, Frederic H.
Overcrowding in U.S. prisons. Criminal justice issues, v. 7, spring 1983: whole issue.
"All the efforts to reduce the prison population will probably prove to be futile, if the causes for overcrowded conditions of U.S. prisons is [sic] analyzed in isolation of other deteriorating systems of our society."

Call, Jack E.
Recent case law on overcrowded conditions of confinement: an assessment of its impact on facility decisionmaking. Federal probation, v. 46, Sept. 1983: 23-32.
"The lower court decisions since Wolfish and Chapman suggest that at least some courts are still appalled by the conditions of confinement brought to their attention and are disposed to distinguish or even ignore those decisions. As a result, when correctional facilities become crowded the likelihood of a lawsuit still must be considered substantial and the court's resolution of the dispute cannot be predicted with confidence."

Campbell, Colin.
Prison overcrowding. Albany, Legislative and Governmental Services, New York State Library, 1982. 4 p. (New York State Library. Topic no. 57)
Bibliography includes citations to thirty-three journal articles and books published between 1971 and 1982.

Colloquium: the prison overcrowding crisis. New York University review of law & social change, v. 12, no. 1, 1983-1984: whole issue (356 p.)
Contents.--The question of appropriate sentences: selective incapacitation.--The question of appropriate sentences: responding to prison overcrowding through sentencing policy.--Alternatives to incarceration.--Post-sentencing strategies: the politics of prison construction.--Institutional responses to overcrowding.--Institutional litigation in the post-Chapman world.

Danziger, Gloria.
Prison crowding. Washington, Congressional Quarterly, 1987. 394-407 p. (Editorial research reports, 1987, v. 2, no. 5)
"Private prisons, electronic surveillance and community service to alleviate prison crowding are reviving debate over prison reform."

DuPont, Pierre S., IV.
Expanding sentencing options: a governor's perspective. NIJ [National Institute of Justice] reports/SNI, no. 186, July 1984: 4-8.
Delaware Governor assesses the dilemma of prison crowding and expanding prison capacity, and "reviews Delaware's proposals to expand sentencing options and introduce greater accountability on the part of offenders and the corrections system."

Gardner, Ralph, Jr.
Prison population jumps to 369,725. Corrections magazine, v. 8, June 1982: 6-11, 14, 46.
Examines the large surge in the prison population during 1981 and the reasons for this growth.

Gottfredson, Stephen D. McConville, Sean, eds.
America's correctional crisis: prison populations and public policy. New York, Greenwood Press, 1987. 260 p. (Contributions in criminology and penology, 0732-4464; no. 17)
Anthology explores crowding and other dimensions of America's crisis in corrections. Includes pieces on the link between overcrowding and violence; the costs of incarceration;

public opinion about corrections; British responses to overcrowding; U.S. State responses to overcrowding; short-term remedies to overcrowding; problems of implementing alternatives to prison; the increasingly punitive nature of American corrections; and privatization of correctional operations.

Gottfredson, Stephen D. Taylor, Ralph B.
The correctional crisis: prison populations and public policy. Washington, U.S. Dept. of Justice, U.S. National Institute of Justice [1983]. 28 p.
"Reports on a series of studies designed to understand why correctional reform efforts vigorously undertaken in the 1970s failed by the 1980's."

Hagstrom, Jerry.
Crowded prisons pose a budget problem for this law-and-order administration. National journal, v. 13, Oct. 10, 1981: 1821-1823.
"President Reagan may have delivered a tough speech on fighting crime, but he's not ready to approve a recommendation for a $2 billion grant program for prison construction."

Harris, Kay
Reducing prison crowding and nonprison penalties. The Annals of the American Academy of Political and Social Science, v. 478, Mar. 1985: 150-160.
Focus is on two types of ameliorative responses to the problem of prison and jail crowding: those aimed at diverting some prison-bound offenders to alternative programs, and those designed to regulate prison population levels more directly. It is argued that both strategies raise practical and philosophical issues that can only be resolved satisfactorily through a comprehensive reassessment of the full spectrum of criminal penalties and how they are used.

Johnson, Carolyn.
Overcrowding in correctional institutions: a selected bibliography. Washington, U.S. Law Enforcement Assistance Administration, 1978. 39 p.

Kaufman, Gerald
The National Prison Overcrowding Project: policy analysis and politics, a new approach. The Annals of the American Academy of Political and Social Science, v. 478, Mar. 1985: 161-172.
A description of the National Prison Overcrowding Project, operated by the Center for Effective Public Policy. The project took shape in 1981, growing out of the desire of the National Institute of Corrections and the Edna McConnell Clark Foundation to incorporate a broad systemic view in their efforts to control overcrowding.

Kravitz, Lee.
Our crowded prisons: do they cause crime or cure it? Scholastic update, v. 119, Feb. 9, 1987: 4-5, 9.
"American prisons are troubled by overcrowding, violence, and despair. What went wrong? And how can these problems be corrected? UPDATE examines the crisis in punishment."

Madden, Richard L.
Out of space: prison crowding in New York, New Jersey and Connecticut. New York times, Sept. 30, 1984: 1, 42; Oct. 1: B2; Oct. 2: B1, B4.
Contents.--Metropolitan area rushes to add prison cells.--Prison crowding inspires new construction ideas.--Search is pressed for ways besides construction to ease prison crowding.

McCoy, Candace.
Determinate sentencing, plea bargaining, and hydraulic discretion in California. Justice system journal, v. 9, no. 3, 1984: 256-275.
Assesses the effect on prison overcrowding of recent legislation in California, particularly the determinate sentencing law of 1977 and a voter-approved plan on plea bargaining from 1982. Study suggests that prison sentence lengths have not increased, but an increased number of convicted felons have been sent to prison. Decisions about granting probation have been strongly influenced by the new plea bargaining process, especially in municipal courts. One consequence is that prisons have become dangerously overcrowded. Contends that these legislative innovations are not necessarily entirely responsible for overcrowding.

McShane, Marilyn.
The effect of the detainer on prison overcrowding. Huntsville, TX, Sam Houston State University, 1985. (Research bulletin no. 3)
Analyzes the effects of detainers on prison overcrowding in Texas. A detainer is a notice of a criminal charge or unserved sentence pending against a prisoner. Detainer inmates may be held longer than their present sentence requires simply because of untried criminal or civil charges. Suggests policy reforms to improve the use of detainers.

Meese, Edwin, III.
More Federal money needed to deal with prison, jail overcrowding problems. Corrections digest, v. 19, Feb. 10, 1988: 4-7.
Reprints portions of a speech given the American Correctional Association meeting in January of 1988, in which U.S. Attorney General Meese stresses the need for more money and innovation for corrections on all levels.

Moran, Michael.
So many prisoners, so little space. Government executive, v. 20, May 1988: 40-41, 43.
"Cuban inmates' rioting made headlines last fall, but the Bureau of Prisons' real problem is chronic overcrowding. A big budget increase should help." Ten new Federal prisons are to be built of which three will be built by private developers and leased by the F.B.P. The overcrowding problem is complicated by the problem of short staffing and inexperienced staff. Includes sidebar: "How Michael Quinlan new head of the F.B.P. met the press."

Mullen, Joan
Prison crowding and the evolution of public policy. The Annals of the American Academy of Political and Social Science, v. 478, Mar. 1985: 31-46.
While crowding has been a persistent feature of the United States prison since its invention in the nineteenth century, the last decade of crisis brought more outspoken media investigations of prison conditions, higher levels of political and managerial turmoil, and a judiciary increasingly willing to bring the conditions of confinement under the scope of the Eighth Amendment review. With the added incentive of severe budget constraints, liberals and conservatives now question whether this is the way to do business. Although crowding cannot be defined by quantitative measures alone, many institutions have exceeded their limits of density according to minimum standards promulgated by the corrections profession. Some fall far below any reasonable standard of human decency. The results are costly, dangerous, and offensive to the public interest. Breaking the cycle of recurrent crisis requires considered efforts to address the decentralized, discretionary nature of sentence decision making, and to link sentencing policies to the resources available to the corrections function. The demand to match policy with resources is simply a call for more rational policy making.

Ney, Steven.
Prison overcrowding after Rhodes v. Chapman. Journal of prison and jail health, v. 2, spring-summer 1982: 5-14.
Examines the issue of prison overcrowding and the meaning and impact of the Supreme Court decision in Rhodes v. Chapman upholding the practice of double-celling in a prison. It is argued that this decision is narrow and limited, and the importance of establishing that the cumulative impact of the conditions of incarceration threatens the physical, mental, and emotional health and well-being of the inmates is emphasized.

Our crowded prisons. Annals of the American Academy of Political and Social Science, v. 478, Mar. 1985: whole issue (9-182 p.)
Contents.--The state of the prisons.--Prisons and public administration.--Toward solutions. Includes eighteen articles on issues related to overcrowding in prisons. Some articles from this issue are listed separately in this bibliography.

Rossum, Ralph.
The problem of prison crowding: on the limits of prison capacity and judicial capacity. Benchmark, v. 1, Nov. 1984: 22-30.
Article concludes that "Judges ought not to be ignorant of the fact that however limited prison capacity is, and however dire and life threatening this limited capacity is asserted by plaintiffs to be, judicial capacity to obtain and process crucial information necessary to assess these claims, to recognize the true dimensions of this problem, and to craft sound policy to deal with it is even more limited."

Ruback, R. Barry. Carr, Timothy S.
Crowding in a woman's prison: attitudinal and behavioral effects. Journal of applied social psychology, v. 14, Jan.-Feb. 1984: 57-68
Two studies with 634 15-65 year old female inmates assessed the impact of crowding on female inmates. Results suggested that women may suffer more discomfort from overcrowding than men.

Serrill, Michael S.
A growing crisis behind bars: tough justice is causing the nation's prisons to bulge. Time, v. 122, Dec. 5, 1983: 64-65.
Examines the factors leading to overcrowding in American prisons. Focuses on stricter sentencing laws.

Stewart, Alva W.
Prison overcrowding: the problem and suggested solutions: a bibliographic review. Monticello, IL, Vance Bibliographies [1984] 14 p.

Symposium: prison crowding. University of Illinois law review, v. 1984, no. 2, 1984: 203-421.
Contents.--Introduction: Illinois' response to the problem of prison crowding, by J. Thompson.--Planning for future prison needs, by A. Blumstein.--Determinate sentencing and prison crowding in Illinois, by J. Casper.--Selective incapacitation: an assessment, by J. Cohen.--Guidelines for incarceration decisions: a partisan review, by M. Gottfredson and D. Gottfredson.--Developing and implementing alternatives to incarceration: a problem of planned change in criminal justice, by A. Harland and P. Harris.--The misalignment of penal responsibilities and state prison crises: costs, consequences, and corrective actions, by P. Nardulli.--Prison overcrowding and the courts: a roadmap for the 1980s, by R. Smolla.

Thornberry, Terence P. Call, Jack E.
Constitutional challenges to prison overcrowding: the scientific evidence of harmful effects. Hastings law journal, v. 35, Nov. 1983: 313-351.
Article concludes "that there is substantial empirical evidence that prison overcrowding is harmful to inmates. Plaintiffs should present tangible evidence of the harmful effects of prison overcrowding to support their constitutional challenges, and courts should carefully consider such evidence, comparing the circumstances at issue with those described in the empirical studies."

U.S. Congress. Senate. Committee on Governmental Affairs. Subcommittee on Federal Spending, Budget, and Accounting.
Prisons projections: can the United States keep pace? Hearing, 100th Congress, 1st session. July 21, 1987. Washington, G.P.O., 1988. 66 p. (Hearing, Senate, 100th Congress, 1st session, S. hrg. 100-537)
Includes testimony by experts on U.S. prisons, in which they discuss the capacity of current prisons and the problems of overcrowding.

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Criminal Law.
Prison overcrowding. Hearing, 98th Congress, 1st session on serious overcrowding in our state prisons and local jails, and the appropriate response of the Federal government to this crisis. December 14, 1983. Washington, G.P.O., 1984. 74 p. (Hearing, Senate, 98th Congress, 1st session, S. hrg. 98-621)

Zedlewski, Edwin W.
Making confinement decisions. [Washington] National Institute of Justice, 1987. [6] p. (Research in brief, July 1987)
Contrasts costs to society of constructing and operating prisons to costs of letting convicted offenders return to the community when prisons are overcrowded and new ones are not built. "The true costs of not building are more difficult to quantify. There are scattered findings on losses due to crime and outlays for criminal justice, but it is impossible to put a price tag on victim harm and fear of crime."

B. JAILS

Allinson, Richard.
Overcrowding is now a national epidemic. Corrections magazine, v. 8, Apr. 1982: 18-24, 26-27.
Examines the reasons why jail populations have been increasing and causing overcrowding in some jurisdictions. Focuses on what is being done to deal with this overcrowding. Includes article by Robert Carney on overcrowding in New Jersey jails.

Bolduc, Anne
Jail crowding. The Annals of the American Academy of Political and Social Science, v. 478, Mar. 1985: 47-57.
In light of the constant interaction between local jails and state prisons, a discussion of jail crowding is essential for understanding prison crowding. Here, the multitude of issues related to jail crowding are examined, and the specific causes and numerous solutions are discussed.

Brennan, Tim.
Offender classification and jail crowding: examining the connection between poor classification and the problem of jail crowding and developing some preventive interventions. Boulder, CO, HSI Inc., 1985. 102 p.
Examines the relationship between classification and jail overcrowding. Two misclassifications are common: the false positive error -- misclassifying low risk offenders as high risks; and the false negative error -- misclassifying high risk offenders as low risk. False positive classification errors produce needless imprisonment and lengthen the stay of incarceration. Both processes can enlarge jail populations. Suggests remedies for overclassification and underclassification.

Gest, Ted.
"No vacancy" signs go up at the nation's jails. U.S. news & world report, v. 99, Dec. 23, 1985: 39.
"In nearly every state, space for housing lawbreakers from drunk drivers to hardened criminals is at a premium."

U.S. jails: 'bombs waiting to go off.' U.S. news & world report, v. 100, June 9, 1986: 72-73.
Describes the overcrowded state of most U.S. jails, and the results of this crowding: inmate violence, poor facilities, and early release of prisoners who should be behind bars.

Hall, Andy.
Systemwide strategies to alleviate jail crowding. [Washington] U.S. National Institute of Justice, 1987. 5 p.
Summarizes "Alleviating Jail Crowding: A Systems Perspective" which "highlights the role of each local criminal justice agency in ensuring the effective use of jail bed space to prevent crime and maintain public safety."

Lawrence, Richard.
Jail educational programs: helping inmates cope with overcrowded conditions. Journal of correctional education, v. 36, no. 1, 1985: 15-20.
Provides results of a survey measuring inmates' perceptions of crowding and other conditions in a San Antonio detention center. Researchers found that educational programs can reduce problems associated with crowding, and can produce more positive feelings among inmates.

Paulus, Paul B. McCain, Garvin.
Crowding in jails. Basic and applied social psychology, v. 4, June 1983: 89-107.
"Examined the effect of housing density in 3 jails: a low security jail, a medium security jail, and violent and nonviolent units. Inmates of these 3 facilities were interviewed and their blood pressure taken. Illness data were taken from subjects' hospital or clinic records. High levels of density were associated with various negative psychological reactions. Social density (number of people in a housing unit) was a more important predictor of these effects than spatial density (space per person). Housing type did not

affect illness complaint rate, but some evidence was obtained for elevated blood pressure in highly dense housing when subjects were confined for large parts of the day. Results are related to previous research on crowding in prisons and other environments."

Perlstein, Jolanta J.

Dealing effectively with crowded jails: a manual for judges, by Jolanta J. Perlstein and D. Alan Henry. Washington, U.S. National Institute of Justice [1986]. 69 p. (Issues and practices)

"This report provides information on specific policies and procedures which have had an impact on jail population levels without detracting from the operations of the office and, in most instances, contributing to improvements in case processing and the administration of justice."

Addresses issues specific to the judicial function, including issuance of summonses, setting bail and release conditions, bail review, continuances, and sentencing.

The implications of effective case processing for crowded jails: a manual for prosecutors. Washington, U.S. National Institute of Justice, 1986. 28 p.

Provides procedures and policies intended to assist prosecutors and judges in case processing and use of detention space, focusing on methods that will reduce crowding in jails.

Quinn, Barbara.

Jail overcrowding: a systems problem. American city & county, v. 103, June 1988: 76-78, 80-81, 85.

"Local corrections officials say alternatives to jail should be considered rather than simply building more and bigger facilities."

West, Anita S.

Jail overcrowding and pretrial detention: a program evaluation (May 1979-September 1980); executive summary. Denver, CO, Social System Research and Evaluation Division, Denver Research Institute, University of Denver, 1980. 52 p.

This program was initiated by LEAA to diagnose specific problems in various jurisdictions experiencing severe jail overcrowding and to alleviate both the causes and the symptoms of overcrowding through a variety of interventions. The evaluation assesses the program's effectiveness through an examination of project impacts and an analysis of the relationship between program inputs and outcomes.

C. EFFECTS

Bonta, James

Prison crowding: searching for the functional correlates. American psychologist, v. 41, Jan. 1986: 99-101.

Comments that the relationship between high population density and negative adaptations in prison is not as conclusive as asserted by V. C. Cox et al, and that their dismissal of an attributional model in favor of a social-interaction demand model to account for the data is too hasty. It is concluded that prison crowding does not necessarily produce detrimental effects and that when such effects are observed, functional factors must be addressed to bring about changes.

Clayton, Obie. Carr, Tim.

The effects of prison crowding upon infraction rates. Criminal justice review, v. 9, fall 1984: 69-77.

"Attempts to expand the current studies and . . . examine the effects of crowding upon several groups of criminal offenders based upon a sample of 21,500 inmates, plus a subsample of 1,300 teenage prisoners . . . . Strong crowding effects were found among young black violent offenders. For this group, crowding was a stronger predictor of infraction rates than any of [the] control variables (age, time served, home county population density, race, or type of crime)."

An empirical assessment of the effects of prison crowding upon recidivism utilizing aggregate level data. Journal of criminal justice, v. 15, no. 3, 1987: 201-210.

"Drawing from official prison data from the state of Georgia for the years 1971 through

1978, [this article] shows that prison density is a poor predictor of recidivism . . . . Age is the critical variable that must be included in any study that addresses the issue of recidivism."

Clements, Carl B.

The relationship of offender classification to the problems of prison overcrowding. Crime & delinquency, v. 28, Jan. 1982: 72-81.

Argues "that prison overcrowding distorts offender classification decisions, and, further, that certain classification policies may worsen the extent and effect of crowding. Examples from recent court cases are provided."

Cobb, Alonzo, Jr.

Home truths about prison overcrowding. The Annals of the American Academy of Political and Social Science, v. 478, Mar. 1985: 73-85.

"Most prisoners are not very concerned about prison overcrowding; they are concerned only with benefiting their own immediate conditions. They talk about overcrowding but leave a minority of inmates to file the petitions and writs regarding the overcrowded conditions. Here, the physical conditions of overcrowded prisons are detailed and strategies are outlined whereby litigious prisoners may protect their own possessions vis-a-vis the prison authorities. Some prison administrators prefer the status quo and dislike inmates' meddling in internal affairs. The federal courts in Georgia have mandated that overcrowded prisons come up to minimum standards. Such court action motivates prisoners to work for more humane prisons."

Cox, Verne C. McCain, Garvin. Paulus, Paul B.

Prison crowding and stress: its nature and consequences. Corrections today, v. 47, Dec. 1985: 12-14.

Suggests methods for reducing stress among inmates of crowded prisons through minimizing interference and uncertainty.

Prison crowding research: the relevance for prison housing standards and a general approach regarding crowding phenomena. American psychologist, v. 39, Oct. 1984: 1148-1160.

Summarizes the results of a research program on the effects of crowding in prisons and jails. The impact of space and social density are discussed, focusing on the various housing arrangements available in prisons. Findings show that, in general, crowding in prisons was related to increased pathology. Theoretical considerations of the effects of crowding are discussed in terms of a social interaction demand model that incorporates uncertainty, goal interference, and cognitive load. Implications of the model and outcomes of a crowded situation are addressed. Concludes that the primary causes of negative effects related to crowding are due to cognitive strain, anxiety or fear, and frustration intrinsic to most social interactions in crowded settings.

D'Atri, David A.

Crowding in prison: the relationship between changes in housing mode and blood pressure. Psychosomatic medicine, v. 43, Apr. 1981: 95-105.

As an analog to animal studies that have shown that crowding elevates blood pressure, the relationship between change in mode of housing and blood pressure was examined for 568 male inmates in a county correctional institution, utilizing interview and medical data. Transfer from single occupancy cells to multiple occupancy dormitories was associated with a statistically significant mean increase in systolic blood pressure. In contrast, men who remained in single cells had little change in systolic blood pressure over time. Men who were retransferred to cells after a short stay in dormitories experienced a mean decline in systolic blood pressure, suggesting that the effects of crowding may be reversible in their early stages. Systolic blood pressure also decreased after continued stay in dormitories, indicating adaptation. The implications of these findings for crowding theory and for an understanding of response to the prison environment are examined.

Farrington, David P. Nuttall, Christopher P.

Prison size, overcrowding, prison violence, and recidivism. Journal of criminal justice, v. 8, no. 4, 1980: 221-231.

"Contrary to a widespread belief about the undesirability of relatively large prisons, a review of the criminological literature yields no empirical evidence that prison size influences behavior inside or after leaving prison . . . . In a more controlled analysis of correctional effectiveness (defined as the difference between predicted and actual reconviction rates), there was a strong tendency for the more overcrowded prisons to be less effective."

Fry, Lincoln J.
Continuities in the determination of prison overcrowding effects. Journal of criminal justice, v. 16, no. 3, 1988: 231-240.
Finds that prison "overcrowding effects are complex and need to be identified through direct involvement and knowledge gained at the individual prison level."

McCain, Garvin.
The relationship between illness complaints and degree of crowding in a prison environment. Environment and behavior, v. 8, June 1976: 283-290.
Examined illness complaint rates in relation to degree of crowding in a federal prison and a county jail. The results suggest that crowding in prisons may induce psychological stress which can be reflected in an increased level of illness complaints.

McCain, Garvin. Cox, Verne C. Paulus, Paul B.
The effect of prison crowding on inmate behavior. Washington, U.S. National Institute of Justice [1980] 156 p.
"The purpose of this research was to identify the effects of prison crowding on inmate health and behavior . . . . The findings provide new information relevant to prison housing standards as well as confirmation of previous findings about the negative effects of prison crowding."

Paulus, Paul B.
Prison crowding: a psychological perspective, by Paul B. Paulus with the collaboration of Verne C. Cox, and Garvin McCain. New York, Springer-Verlag, c1988. 115 p. (Research in criminology)
Contents.--Introduction.--Effects of crowding in general.--Prison crowding research.--Prison housing.--Crowding and health.--Background and experiential factors.--Gender and racial/ethnic differences.--Theoretical implications.--Practical implications and future directions.

Paulus, Paul. McCain, Garvin. Cox, Verne.
The effects of crowding in prisons and jails. In Reactions to crime: the public, the police, courts, and prisons, edited by David Farrington and John Gunn. New York, Wiley, 1985. p. 113-134.
Finds that crowding in prisons can be related to several harmful effects. Increases in institutional population relative to capacity are associated with increased deaths, suicides, psychiatric commitments, disciplinary infractions, and reconvictions. Increasing the number of inmates in a housing unit leads to increases in negative psychological reactions, clinic visit rates, and blood pressures.

Ruback, R. Barry. Carr, Timothy S.
Crowding in a women's prison: attitudinal and behavioral effects. Journal of applied social psychology, v. 14, no. 1, 1984: 57-68.
Investigates the effects of crowding in a women's prison, using two studies: one at the Georgia Rehabilitation Center for Women, the other at the Women's Correctional Center in Hardwick, Georgia. Researchers found that crowding was related to several negative reactions, including increased rule violations, low opinion of living arrangements, and a decreased level of perceived control.

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Penitentiaries and Corrections.
The problem of prison overcrowding and its impact on the criminal justice system. Hearing, 95th Congress, 1st session, December 13, 1977. Washington, G.P.O. 1978. 113 p.
Hearings held in Delaware to "examine the need for construction of new and renovation of existing State and local correctional facilities."

D. SOLUTIONS

Austin, James.

Using early release to relieve prison crowding: a dilemma in public policy. Crime & delinquency, v. 32, Oct. 1986: 404-502.

"Overall early release proved to be cost-effective . . . . However, early release increased the amount of crime suffered by the public and further discredited an already troubled criminal justice system. If nothing more, this research provides policymakers with a greater understanding of the potential consequences associated with early release as well as the limits of incapacitation (both positive and negative) as an effective strategy for controlling crime in our society."

Avoiding overcrowding through policy analysis: the Nevada experience. Washington, U.S. National Institute of Justice, 1986. 34 p. (National Institute of Justice research report)

"Report summarizes the experiences of the Nevada legislature as it struggled to construct an affordable, overall [prison reform] policy responsive to the public. It represents a refreshing approach to policy construction which entails the use of data applied to innovative policy simulation analytic techniques to provide insight on the probable effects of policy reform prior to enactment. Although no fundamental changes were immediately enacted, the results suggest the best policy is to 'do nothing' until one is certain of the consequences of reform."

Boyd, Lynn.

Construction technologies to reduce overcrowding. Corrections today, v. 46, Apr. 1984: 42, 44.

Examines new technologies available for prison construction, particularly modular and pre-fabricated buildings. Explains how use of these architectural options can speed the construction of prisons facilities, thereby alleviating overcrowding.

Conrad, John P.

Can corrections be rehabilitated? Federal probation, v. 46, June 1982: 3-8.

"During the last 30 years much progress has been made toward dissolving the barriers of hostility that generated violence and distrust between correctional staffs and prisoners. Because of forthcoming budgetary stringencies, rapidly increasing populations, and a vast increase in the level and frequency of violence, much of that progress is in danger of reversal. The author feels it is urgently necessary to reduce prison intake by making maximum use of community-based corrections. He proposes a new model of sanctions that will be more severe than the present community corrections without resort to incarceration."

Cory, Bruce. Gettinger, Stephen.

Time to build?: the realities of prison construction. New York, Edna McConnell Clark Foundation, c1984. 64 p.

Examines the current problem of prison overcrowding, and finds that "too often, policy makers have concluded that the only humane course open to them is building a new prison or jail that will, at least temporarily, relieve the human suffering caused by overcrowding. But experience suggests that this is frequently an expensive, short-sighted and unacceptable solution."

Dukakis, Michael S.

A balanced plan to end prison overcrowding. Boston, MA, Office of the Governor, 1985. 50 p.

In this special message on prison overcrowding, the Governor of Massachusetts proposes to solve the present crisis in state and county correctional facilities by 1988 through a combination of state and local initiatives.

Finn, Peter.

Prison crowding: the response of probation and parole. Crime & delinquency, v. 30, Jan. 1984: 141-153.

"Interviews with 31 probation and parole officials in 30 states and the District of Columbia were conducted to determine the role these agencies are currently playing in the effort to alleviate prison crowding. The results indicate that there have been relatively few changes in probation programs designed to reduce prison crowding."

Funke, Gail S.

The economics of prison crowding. The Annals of the American Academy of Political and Social Science, v. 478, Mar. 1985: 86-99.

An examination of the economic implications of the problem of overcrowding when the construction of new prisons is selected as the solution. True costs, which are substantially higher than commonly thought, are derived, and the costs of specific sentences examined. Prison is compared with other punishment alternatives. Myths about prisons are discussed, and the real policy choices faced by public decisionmakers are delineated.

Garry, Eileen.

Options to prison crowding. Washington, National Criminal Justice Referral Service, 1984. 31 p.

Seeks to provide policy makers and practitioners with information on four broad strategies for effective state responses to the U.S. prison crowding crisis. These strategies are: construction of new facilities or acquisition of surplus property; selective incapacitation; reduction of prison population through "front door" (community corrections and service, restitution, and probation) and "back door" (emergency release, parole, good time, commutation, and furloughs) options; and controlling levels of incarceration through sentencing or release policies sensitive to changes in prison populations.

Gibbons, Don C.

Breaking out of prisons. Crime & delinquency, v. 32, Oct. 1986: 503-514.

Commenting on James Austin's study, "Using early release to relieve prison crowding: a dilemma in public policy," author supports the conclusion that early release should not be viewed as much more than a temporary release valve to relieve prison crowding.

Irwin, John. Austin, James.

It's about time: solving America's prison crowding crisis. [San Francisco?] National Council on Crime and Delinquency. 1987. 23 p.

"Explores the prison crowding crisis in the United States and suggests that shorter prison terms are a viable solution to reducing prison populations."

Judge, Frank T., III.

Relief for prison overcrowding: evaluating Michigan's accelerated parole statute. University of Michigan journal of law reform, v. 15, spring 1982: 547-576.

Comment "describes and analyzes Michigan's Prison Overcrowding Emergency Powers Act. Part I reviews briefly current efforts to relieve prison overcrowding and concludes that traditional remedies are largely inadequate. Part II examines the early prisoner release statute and its implementation. Finally, Part III evaluates the statute's success in relieving prison overcrowding."

Lane, Michael P.

A case for early release. Crime & delinquency, v. 32, Oct. 1986: 399-403.

The Director of the Illinois Department of Corrections explains his reasons for using early release to relieve prison overcrowding.

McCarthy, Bernard J.

Responding to the prison crowding crises: the restructuring of a prison system. Criminal justice policy review, v. 2, no. 1, 1988: 3-20.

Study uses an open systems perspective, focusing on environmental variables, to illustrate how the Alabama penal system has coped with prison crowding during the late 1970s and early 1980s. Data sources included report crime statistics and state agency records.

Ortiz, Solomon P.

How to deal with prison overcrowding in a logical and cost-effective manner. Crime control digest, v. 22, July 25, 1988: 3-4.

U.S. Representative describes bill he introduced to address the national prison overcrowding problem.

Paulus, Paul. McCain, Garvin. Cox, Verne.

Prison standards: some pertinent data on crowding. Federal probation, v. 45, Dec. 1981: 48-54.

Concludes that "considerable reduction in crowding effects can also be achieved by reduction of number of people in multiple occupant open housing. For example, the authors believe that increasing living space in open dormitories is less effective than dividing existing space into cubicles even though the space per person may remain unchanged or even decline."

Ruback, R. Barry. Carr, Timothy S. Hopper, Charles H.
Perceived control in prison: its relation to reported crowding, stress, and symptoms. Journal of applied social psychology, v. 16, no. 5., 1986: 375-386.
Researchers conducted two studies to investigate the effects of perceived control, living accommodation evaluations, and physical symptoms in two men's prisons, one housing 181 inmates and the other housing 623 inmates. Combined results suggest that perceived control is an important aspect of how inmates react to their living environment. Suggestions for increasing perceived control and decreasing stress associated with crowding in institutional settings are presented.

Sapp, Allen D.
Administration responses to prison overcrowding: a survey of prison administrators. Warrenburg, MO, Central Missouri State University, 1984. 9 p.
Reviews the extent of overcrowding in U.S. state correctional systems and determines what type of administrative responses have been implemented to alleviate overcrowding, using the results of a survey administered to the directors of the 50 state correctional systems.

Selke, William L.
Judicial management of prisons? responses to prison litigation. Prison journal, v. 65, no. 1, 1985: 26-37.
Examines the potential for prison litigation based on Section 1983 of the U.S. Civil Rights Act. This type of litigation is proposed as a potential remedy for acute prison overcrowding resulting from legislative irresponsibility in the reform of sentencing statutes. Author finds that although successful prisoner class action suits have brought some favorable change -- such as early release measures and sentencing alternatives for nonviolent offenders -- most reactions from corrections officials and legislators have avoided the basic incongruity between the number of sentenced offenders and the availability of resources. Conclusion is that Section 1983 suits have been effective in clarifying the realities of prison conditions and in illustrating the costliness of the penal sanction.

Sims, Brian. O'Connell, Jack.
Early release: prison overcrowding and public policy implications. Olympia, WA, Washington Office of Financial Management, 1985. 44 p.
Examines an early release program instituted to alleviate overcrowding in Washington State prisons. Finds that early release results in only temporary reductions in prison overcrowding, and will not resolve prison overcrowding problems, but will allow a state to comply with court orders and to build new prisons. Warns that as the number of low-risk prisoners released increases, policy makers will have to recognize that future early releases are likely to involve more serious offenders and greater public risks.

Skovron, Sandra Evans. Scott, Joseph E. Cullen, Francis T.
Prison crowding: public attitudes toward strategies of population control. Journal of research in crime and delinquency, v. 25, May 1988: 150-169.
"Examines public attitudes toward policies to reduce prison crowding. Public attitudes were assessed through telephone surveys of adult residents of two major midwestern cities: Cincinnati and Columbus, Ohio. Substantial public support for community-based corrections and incentive good time was found. Prison construction received only moderate support while high levels of public disapproval were found for shortening sentences and increasing parole board authority."

Two billion dollars worth of prison construction may only stall the overcrowding problem. Corrections digest, v. 16, Dec. 18, 1985: 1-2.
"States are under pressure to alleviate prison overcrowding plan to spend more than two billion in the next four years building more cells, although within five years the new prisons will again bulge at more than 30% over capacity."

U.S. Congress. House. Committee on the District of Columbia. Subcommittee on Judiciary and Education.

Prison overcrowding and alternative sentencing. Oversight hearing, 98th Congress, 1st session, on overcrowding in District of Columbia correctional institutions and alternative sentencing proposals, July 12, 1983. Washington, G.P.O., 1983. 76 p.

Woldman, William F.

The crisis in prison overcrowding: alternatives to incarceration. Congressional Research Service review, v. 6, July-Aug. 1985: 20-21, 30.

Concludes that "the pressures of bulging prisons and scarce public funds may force government officials to reexamine the use of imprisonment versus other forms of social control. Judicial orders mandating reduced prison populations may provide incentives to employ non-incarcerative sanctions for certain classes of offenders. Various estimates place the number of non-violent offenders, currently incarcerated, who could benefit from alternative programs, without endangering public safety, at between 20 and 35 percent. These and other alternative strategies may provide public policy makers with some options in dealing with this critical issue."

Yablan, Marvin.

The application of queuing models to strategies for reducing prison population size. Journal of criminal justice, v. 16, no. 3, 1988: 183-196.

Queuing theory models are used to investigate the effectiveness of strategies for reducing prison population size. These strategies are: reduced or zero inmate admissions; immediate release of some inmates; and a reduction of the average time incarcerated.

III. PRISON VIOLENCE

A. GENERAL MATERIALS

Andresky, Jill.
"Soft" prisons? There's no such thing. Forbes, v. 133, Apr. 23, 1984: 114-115, 118, 122.
"They're not the iron jungles where racial hatred, rape and violence reign. But they're still slammers."

Atlas, Randy.
Violence in prison: environmental influences. Environment and behavior, v. 16, May 1984: 275-306.
Reports on an investigation of "the relationship between environmental factors and incidents of inmate violence within four correctional institutions in the southeastern United States .... The results indicated that there may be some environmental influence trends, but that they vary from prison to prison and are not supportive of theories that rainfall, temperature, seasons, or moonphase have direct influences on prison violence."

Braswell, Michael. Dillingham, Steven. Montgomery, Reid, Jr., eds.
Prison violence in America. Cincinnati, OH, Anderson Pub. Co, c1985. 178 p. (Criminal justice studies)
"Eleven articles address prison violence from a variety of perspectives and suggest policy options and remedial measures for more effective presentation and coping strategies."

Buchanan, Robert A. Unger, Cindie A. Whitlow, Karen.
Management of inmate violence: a case study. Kansas City, MO, Correctional Services Group, 1987. 68 p.
Explores the management of inmate violence at the 3,200 bed Arizona State Prison Complex in Florence. Finds that the strategies used were effective, but that a small group of inmates remained difficult to manage.

Clinical treatment of the violent person. Rockville, MD, U.S. National Institute of Mental Health, 1985. 96 p.
"Monograph describes the treatment and management of the violent person in various inpatient and outpatient settings, including psychiatric emergency rooms, community mental health centers, mental hospitals, juvenile institutions, prisons, and jails."

Cotton, Donald J. Groth, A. Nicholas.
Sexual assault in correctional institutions: prevention and intervention. In Victims of sexual aggression: treatment of children, women and men, edited by Irving R. Stuart and Joanne G. Greer. New York, Van Nostrand Reinhold, 1984. 127-155 p.
"Correctional facilities are high-risk settings for male rape. The extent and seriousness of this problem often goes unrecognized due to the nature of prison conditions, inmate codes, and staff attitudes. Inmate rape is not primarily a sexually motivated act but instead constitutes the sexual expression of aggression .... Male rape may be psychologically devastating to the victim in that it devalues him in regard to two primary sources of male identity: sexuality and aggression. Furthermore, the victim is confined to the same institution as his offender and therefore continues to remain at risk of further assault. Civil litigation regarding institutional liability is increasing, and it is incumbent upon correctional institutions to train their personnel in regard to identifying, treating, and preventing the sexual abuse of inmates. To this end the major issues to be addressed for a model protocol are presented in this chapter."

Coyle, A. G.
Management of dangerous and difficult prisoners. Howard journal of criminal justice, v. 26, May 1987: 139-152.
"The problem of how to manage those prisoners who refuse to conform to standard prison rules and regulations has attracted considerable attention in Great Britain and North America. This article describes some of the strategies adopted in Canada and the United States and contrasts them with developments in Scotland. It is concluded that there should be a prior statement of the objective of any alternative unit for this type of

prisoner, that its regime should be clearly defined, that a consensus should be reached about what constitutes a difficult or dangerous prisoner, and that the wider implications of managing this type of prisoner should be publicly appreciated."

Dabbs, James M.

Saliva testosterone and criminal violence in young adult prison inmates. Psychosomatic medicine, v. 49, Mar.-Apr. 1987: 174-182.

"Measured free testosterone in the saliva of 89 male prison inmates (aged mostly 18-23 yrs). Subjects with higher testosterone concentrations had more often been convicted of violent crimes. The relationship was most striking at the extremes of the testosterone distribution, where 9 out of 11 subjects with the lowest testosterone concentrations had committed nonviolent crimes, and 10 out of 11 inmates with the highest testosterone concentrations had committed violent crimes. Among the inmates convicted on nonviolent crimes, those higher in testosterone received longer times to serve before parole and longer punishments for disciplinary infractions in prison. In the housing unit where peer ratings were most reliable, inmates rated as tougher by their peers were higher in testosterone."

Eisikovits, Zvi. Baizerman, Michael

"Doin' time": violent youth in a juvenile facility and in an adult prison. Journal of offender counseling, services and rehabilitation, v. 6, spring 1982: 5-20.

"Violent youth in one midwestern state were given an indeterminate sentence to either a juvenile facility or an adult prison. About 43 violent youths in these facilities were interviewed to see how they "did time" in each place. These data can be of value in assessing the practice of giving indeterminate sentences, in understanding youth's existential experience of punishment, and in examining the utility of a developmental perspective in research program development and policy making. The central public issue is what to do with youth who are "too young to be criminals and too violent to be youth." The data suggest that youth in both facilities are youth first. In the adult institution, the youthful respondents learned quickly that violence is a way of life, a mundane event, and a way of being with others. They lost sight of getting out. Youth in the juvenile facilities learned to be con-men and used the treatment language of the program to describe themselves to others in the facility. In this way, they could make time determinate and short: they got better. Youth in both facilities understood a sentence as punishment."

Engel, Kathleen. Rothman, Stanley.

Prison violence and the paradox of reform. Public interest, no. 73, fall 1983: 91-105.

"The overall effects of the prisoner rehabilitation reform movement have been the dissolution of the inmate social order and heightened violence. This was certainly not the intention of most of those who initiated the reforms."

Family parameters of violent prisoners. Journal of social psychology, v. 127, Feb. 1987: 83-91.

Attempts to explain the criminal offenses, particularly criminal violence, of a sample of 60 violent and 60 nonviolent prisoners, by investigating their attachment to and relationships with their families. Data from court files and several family background indices were analyzed in four multiple regression analysis procedures. Results indicate that attachment to family was negatively associated with impulsive violence, and parents who were described as impunitive were positively associated with relatively planned violence.

Farmer, J. Forbes.

A case study in regaining control of a violent state prison. Federal probation, v. 52, Jan. 1988: 41-47.

Examines methods used at Walpole State Prison (now called Cedar Junction) in Massachusetts to reduce violence and improve control and morale.

Feld, Barry C.

Neutralizing inmate violence: juvenile offenders in institutions. Center for Criminal Justice, Harvard Law School. Cambridge, MA, Ballinger, c1977. 241 p. (Series on Massachusetts youth correction reforms)

Contents.--Chapter 1: Subcultural violence, the institutions, the inmates.--Chapter 2: Organizational structure and program characteristics of the cottages.--Chapter 3: The inmate subcultures.--Chapter 4: Social structure of the inmate subculture.--Chapter 5: The presenting culture: the influence of sex and race on subcultural adaptation.--Chapter 6: Outcome and conclusions: institutional treatment and the differences it makes.

Fennell, John T.

Islands of violence: the crisis of America's prisons and jails. Journal of social, political, and economic studies, v. 8, spring 1983: 81-91.

Argues that "controlling institutional violence and creating an orderly, secure and humane environment is the most formidable task confronting the correctional system."

Fox, James G.

Organizational and racial conflict in maximum-security prisons. Lexington, MA, Lexington Books, c1982. 191 p.

Contents.--Foreword, by C. Ronald Huff.--Introduction.--Prisons at the crossroads.--Prison management: the view from the top.--Prison guards: the front line in the workplace.--Maximum-security prisoners: a community in conflict.--Prisoner organizations: united we stand, divided we fall.--Where from here: conflict or consensus?--Appendices.

Galbo, Andrea.

Death after life: the future of New York's mandatory death penalty for murders committed by life-term prisoners. Fordham urban law journal, v. 13, no. 3, 1984: 597-638.

"Note concludes that there can not and should not be a mandatory death penalty for life-term prisoners who murder in New York. This type of statute is clearly unconstitutional because it does not allow for individualized consideration of the offender and the offense. In addition, it is unreasonably discriminatory towards this class of defendants."

Henderson, Monika.

An empirical typology of violent incidents reported by prison inmates with convictions for violence. Aggressive behavior, v. 12, no. 1, 1986: 21-32.

"Examined the situations under which violence has occurred in an attempt to cluster these different situations into an empirical typology of violent incidents. Forty-four male prison inmates (aged 22-51 yrs) convicted for violent offenses were interviewed, and details of current offense, previous convictions for violence, prison incidents, and violent situations outside of prison were obtained from each Subject Information on victim, circumstances, precipitating events, type of violence, and emotions at the time was derived for 246 violent incidents. Cluster analysis revealed eight clusters: criminal violence to familiar victims, peer violence within prison, domestic violence, peer violence in pubs, gang violence, violence to staff in prison, criminal violence to unknown victims with accomplices, and public violence against younger victims. Results are discussed in terms of treatment of violent offenders, with special emphasis on social skills training."

Henderson, Monika. Hewstone, Miles R.

Prison inmates' explanations for interpersonal violence: accounts and attributions. Journal of consulting and clinical psychology, v. 52, Oct. 1984: 789-794.

"Explanations given by 44 22-51 year old male violent offenders for 226 incidents of violence were coded for locus of attribution (e.g., self, other, situation) and for excuse vs. justification and were examined for their relationship to certain situational variables (e.g., sex of victim, presence of 3rd parties). Results indicate significant associations that were consistent with predictions from attribution theory. Subjects' explanations for their violent behavior were more external than internal, and explanations for violent episodes were more often justifications than excuses. Explanations in the form of excuses were given more frequently when the victim died. Attributions of single perpetrators were less external than those of subjects who acted with accomplices. There was more victim attribution and less situation attribution when the victim was an intimate or familiar."

Kratcoski, Peter C.

The implications of research explaining prison violence and disruption. Federal probation, v. 52, Mar. 1988: 27-32.

Investigates the circumstances leading to assaults against correctional officers in prisons.

Lerner, Steve.

Rule of the cruel. New republic, v. 191, Oct. 15, 1984: 17-21.

"Contrary to what most of us assume from stories in the press, it is not riots and the taking of hostages that is the most prevalent and dangerous form of violence in prison but attacks upon inmates by other inmates. Although there is a dearth of hard statistics, there is no question that noncollective violence has been escalating in our prisons since the 1960s."

Levin, Michael Graubart.

Fight, flee, submit, sue: alternatives for sexually assaulted prisoners. Columbia journal of law and social problems, v. 18, no. 4, 1985: 505-530.

Article considers "alternatives for sexually assaulted prisoners: the duress or necessity defense to escape from prison for those prisoners who fear imminent sexual assault, tort actions against jailers who fail to protect prisoners from assaults and constitutional challenges to conditions of confinement that allow such assaults to occur."

Lockwood, Daniel.

Prison sexual violence. New York, Elsevier North Holland, c1980. 167 p.

Originally presented as the author's thesis, State University of New York at Albany.

Nacci, Peter L. Kane, Thomas R.

The incidence of sex and sexual aggression in Federal prisons. Federal probation, v. 47, Dec. 1983: 31-36; v. 48, Mar. 1984: 46-53.

A two-part report which describes results of a national investigation, by Federal Prison System researchers, of inmate sexual aggression and homosexual activity.

Inmate sexual aggression: some evolving propositions, empirical findings, and mitigating counter-forces. Journal of offender counseling, services, and rehabilitation, v. 9, no. 1-2, 1984: 1-20.

Report updates the U.S. Bureau of Prisons' on-going investigation of inmate sexual aggression.

"Despite the fact that inmate populations are becoming more volatile . . . only about two sexual assaults occurred per month in 1983 in a system that confines 31,000 inmates. In previous reports, covering the time period between 1973 and 1977, the same sexual assault frequency was observed. This report also contrasts some of the findings from the Federal study with results from other reports, . . . discusses the Federal Bureau of Prison's policy on homosexual activity and family visitation programs . . . [and] describes some processes in corrections which will make prison generally safer for all inmates."

National Symposium on Law Enforcement Science and Technology, 4th, Washington, 1972.

Prevention of violence in correctional institutions. [Washington] National Institute of Law Enforcement and Criminal Justice, 1973. 65 p. (Criminal justice monograph)

Selections from the symposium proceedings. "Conducted by the Institute of Criminal Justice and Criminology, University of Maryland."

Prison violence. Corrections compendium, v. 7, Mar. 1983: 1, 5-9.

Presents state-by-state statistics "for 1981 and for 1982 through July 1, on inmates killed by inmates, staff killed by inmates, inmate suicides, and riots or serious disturbances occurring in correctional facilities."

Scarfone, Anthony C.

The mandatory death penalty for murder by lifers: foregoing procedural safeguards on the illusory promise of deterrence. Syracuse law review, v. 36, no. 4, 1986: 1303-1340.

Comment concludes that "sacrificing the established constitutional mandate of individualized consideration would result in the execution of all life prisoners who murder, notwithstanding any mitigating circumstances that may accompany their crimes. If there is an overriding constitutional justification for such a sacrifice, one is hard-pressed to find it in the need to deter life-term prisoners from murdering."

Singer, Linda R. Keating, J. Michael.

Prisoner grievance mechanisms: a better way than violence, litigation, and unlimited administrative discretion. Crime & delinquency, v. 19, July 1973: 367-377.

"Asserts that the need exists for a grievance mechanism in the correctional context. The cost of violence as a means of obtaining redress of grievances is recognized unanimously as prohibitive. According to inmates, correctional administrators, judges, and reformers, litigation is also an ineffective substitute for an institutionalized system in the resolution of grievances. A preliminary survey of administrative mechanisms adopted by various pioneering correctional jurisdictions shows structural weaknesses that portend failure. Preservation of the status quo does nothing for grievance procedures. A direct mail channel to top administration is ineffective as there is no guarantee for a response. Leaving grievance resolution to inmates through self-government still places the final decision-making power in the hands of the administration. A widely used grievance mechanism, the ombudsman, can only recommend action, not enforce it. In these approaches the common characteristic leading to their failure is that the administrator retains absolute discretion. The Center for Correctional Justice, in Washington, DC, has established an essential element in its grievance procedures: participation by outsiders who are unattached to prisoners and correctional officials. Some sort of arbitration evolves as the final step of the procedure. Perhaps the era of unlimited administration discretion is ending."

Suedfeld, Peter.
Environmental effects on violent behavior in prisons. International journal of offender therapy and comparative criminology, v. 24, no. 2, 1980: 107-116.
Examines environmental factors that increase the likelihood of violence within prisons, based on studies of the interaction between humans and their physical environment and social-psychology research on aspects of the social environment. The three main environmental factors that increase the likelihood of violence among male prisoners are spatial intrusions, monotony, and external control, which are all part of prison life and increase the general arousal level. Excessive arousal in the prison setting leads the prisoner to attempt to reduce stress by defending his own territory, seeking excitement and reaffirming control of his own fate. The automatic response of many prisoners to stress is violence, making its elimination in prisons unlikely; however, certain changes in the prison environment that may help are suggested.

Sylvester, Sawyer F. Reed, John H. Nelson, David O.
Prison homicide. Jamaica, NY, Spectrum Publications New York, distributed by Halsted Press, c1977. 126 p. (Sociomedical science series)
Contents.--1. Prison mortality.--2. Characteristics of homicide events.--3. Characteristics of homicide participants.--4. Characteristics of homicide institutions.--5. Conclusions.

Toch, Hans.
Police, prisons, and the problem of violence. Washington, G.P.O. [1977]. 142 p. (Crime and delinquency issues) (DHEW publication; no. (ADM) 76-364)
Contents.--The shape of police violence.--Reducing police violence.--The shape of prison violence.--Conflict management in prisons.--The "dangerous" inmate.--Treatment for violent inmates.--Peace keeping.

Toch, H. Adams, K.
Pathology and disruptiveness among prison inmates. Journal of research in crime and delinquency, v. 25, Feb. 1986: 7-21.
"Article explores the relationship between mental health problems of prison inmates and the inmates' involvement in custodial violations . . . . We find that mentally ill inmates have a higher rate of disciplinary infractions than other inmates, controlling for differences in social and criminal history. There are also indications that the rate of disciplinary infractions varies with the nature, severity, and chronicity of inmate mental health problems. We discuss these findings from a perspective that views disturbed and disruptive behavior as related manifestations of an impaired ability to cope with social situations."

Toch, H. Adams, K. Greene, R.
Ethnicity, disruptiveness, and emotional disorder among prison inmates. Criminal justice and behavior, v. 14, Mar. 1987: 93-109.
"In this exploration of mental health and disciplinary problems in prisons, we compare social history, criminal history, and psychiatric diagnoses across ethnic groups and across mental health service-delivery categories on a release cohort of over 10,000 inmates, with particular attention to differences between low-rate and high-rate infractions. The data indicate that age-related variable are the most helpful in explaining variations in infractions rates across ethnic groups."

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Criminal Law.
Prison violence and capital punishment. Hearing, 98th Congress, 1st session, oversight hearing to examine capital offenses by Federal prisoners. November 9, 1983. Washington, G.P.O., 1984. 15 p. (Hearing, Senate, 98th Congress, 1st session, S. hrg.; 98-576)
Hearing held to consider the possibility of instituting the death penalty for Federal prisoners who commit murder or other crimes while in prison.

Vinter, Robert D.

Trends in State correction: juveniles and the violent young offender. Crime & delinquency, v. 25, Apr. 1979: 145-161.

"From 1970 to 1974, institutionalization trends showed a decrease for juveniles and a slight rise for adults. Levels of juvenile and adult institutionalization in the fifty states are correlated with four crime categories (total index, violent, property, and burglary). No association is found between a state's crime and juvenile institutionalization rates. However, there are associations between a state's crime and adult institutionalization rates; the correlation is strongest for violent crime for each of the years studied. State juvenile justice policies and practices impede rational assignment of young offenders according to severity of offense and degree of risk. Violent offenders are often mixed with misdemeanants and status offenders. Suggestions for improved policy making are offered."

Whitlow, K. L. Buchanan, R. A.

Management of inmate violence: a case study. Kansas City, MO, Correctional Services Group, 1987. 106 p.

"This two-year case study of inmate-violence management at the Arizona State Prison Complex-Florence before and after a change of the prison administration entailed interviews with staff, surveys of both staff and inmates, and analyses of agency records regarding violent incidents."

B. CROWDING

Anson, R. H.

Overcrowding and inmate facilities. International journal of comparative and applied criminal justice, v. 8, spring/winter 1984: 93-100.

"A number of theorists have suggested that prison overcrowding produces greater tendencies toward violence and interpersonal aggression. Empirical studies of the effects of overcrowding on the prison population have been conducted on individual inmate buffer zones, or have focused on specific institutions within a state or federal prison system. The paper reevaluates the relationship between prison crowding and inmate violence using data reported for 51 Departments of Corrections reported in the Sourcebook of Criminal Justice Statistics. Results of the analysis indicate that although overcrowding relates to the number of suicides and homicides in expected directions, these connections reverse themselves as indicators of inmate violence are translated into percentages of respective inmate populations."

Clayton, Obie. Carr, Tim.

The effects of prison crowding upon infraction rates. Criminal justice review, v. 9, fall 1984: 69-77.

"Attempts to expand the current studies and . . . examine the effects of crowding upon several groups of criminal offenders based upon a sample of 21,500 inmates, plus a subsample of 1,300 teenage prisoners . . . . Strong crowding effects were found among young black violent offenders. For this group, crowding was a stronger predictor of infraction rates than any of the control variables (age, time served, home county population density, race, or type of crime)."

Ekland-Olson, Sheldon.

Crowding, social control, and prison violence: evidence from the post-Ruiz years in Texas. Law and society review, v. 20, no. 3, 1986: 389-421.

Assesses two explanatory models for prison violence. In the crowding model, violence is said to arise from the cognitive confusion and tension induced by crowded conditions. In the social control model, violence is seen as one among several important control mechanisms deeply rooted in the social order of prison life. The models were evaluated using data from 1968 to 1984 on the forms of violence in the Texas prison system: homicide, inmate-inmate assaults with weapons, and inmate-staff assaults. Results support the control model over the crowding model.

Ekland-Olson, Sheldon. Barrick, Dennis M. Cohen, Lawrence E.

Prison overcrowding and disciplinary problems: an analysis of the Texas prison system. Journal of applied behavioral science, v. 19, no. 2, 1983: 163-192.

Reviews trends for the total system as well as individual institutions within the Texas Department of Corrections. Analysis of data from individual inmates is also included. Both assault and total disciplinary rates were found to be a function of the age of the inmate population rather than overcrowding. This is consistent with findings from the Federal Bureau of Prisons as well as data from British prisons. Although prison overcrowding may be an important factor in the overall quality of prison life, it is inappropriate to conclude that it has much influence on either the total disciplinary or the assault rates in prisons.

Ellis, Desmond.
Crowding and prison violence: integration of research and theory. Criminal justice and behavior, v. 11, Sept. 1984: 277-308.
Reviews research on social density/crowding effects and mediating variables on the level of prison violence.

Crowding and prison violence: integration of research and theory. Criminal justice and behavior, v. 11, Sept. 1984: 277-308.
Explores whether the relationship between social density and violent behavioral sink phenomena (e.g., self-injury, assaults, homicides) vary within different prisons in the same society by investigating the strength and direction of the relationship between crowding and trouble in prisons. Research concerning age, transiency, scarcity, competition, and violence, and their relation with social density and crowding is reviewed and integrated into a model that treats crowding as a cognitive-evaluative state and as a dependent variable. To indicate its utility, the model is applied to a real-life prison situation in a large medium security Federal prison housing male prisoners. Suggests that the prison situation described repeats itself in most prisons that inmates and staff label as crowded.

Gaes, Gerald G. McGuire, William J.
Prison violence: the contribution of crowding versus other determinants of prison assault rates. Journal of research in crime and delinquency, v. 22, Feb. 1985: 41-65.
Provides "an empirical assessment of the relative contributions of crowding levels, inmate age, and other salient population, staff, and institutional characteristics to observed levels of assault rates."

Goodgame, Dan.
Mayhem in the cellblocks: gangs terrorize Folsom and other crowded prisons. Time, v. 126, Aug. 12, 1985: 20.
Attributes the growth in gang-related prison violence to overcrowded conditions and racial tensions.

Leger, Robert G.
Perception of crowding, racial antagonism, and aggression in a custodial prison. Journal of criminal justice, v. 16, 1988: 167-181.
"This research investigated the interrelationship of perception of crowding, racial antagonism, and aggression in a custodially oriented southern prison. Due to the black-white ratio in each dorm (2:1) and the forced, largely inescapable interaction in the open dorm housing arrangement, it appeared that race had an important effect upon the interpersonal dynamics of the prison. Perception of crowding was directly associated with the racial antagonism variables of stereotyping and social distance, especially for white inmates. Additionally, racial stereotyping and social distance were related to aggression, particularly interracial violence."

Lieber, James.
The American prison: a tinderbox. New York times magazine, Mar. 8, 1981: 26-28, 30, 32, 34-35, 56-58, 60-61.
"Legislators are overcrowding prisons as a result of efforts to deal with crime, and experts say these prisons are in danger of erupting at any moment."

C. GANGS

Camp, C. G. Camp, G. M.
Management strategies for combatting prison gang violence. Washington, U.S. National Institute of Justice, 1988. 90 p.
"This report presents issues raised in the course of seeking solutions to the problem of prison gang violence and discusses options available to correctional administrators and the practical consequences of various options. It is based primarily on first-hand observations and analyses of the experiences with and response to prison gangs in five correctional facilities.

Camp, George M.
Prison gangs: their extent, nature, and impact on prisons; principal investigators, George M. Camp, Camille Graham Camp. Washington, U.S. Federal Justice Research Program, 1985. 220 p.
Provides the results of a study by the Criminal Justice Institute of "prison gangs, including their nature and extent, their effects on prisons, prisoners and administrators and current strategies devised to cope with and manage prison gang situations."

Cox, Victor.
Prison gangs: inmates battle for control. Corrections compendium, v. 10, Apr. 1986: 1, 6-9.
Overviews the problem of gang violence in California, Arizona, and Texas prisons. "The Big Four of prison gangs, both in influence and propensity for violence, are the Aryan Brotherhood, Mexican Mafia, Nuestra Familia and Black Guerrilla Family."

Porter, Bruce.
California prison gangs: the price of control. Corrections magazine, v. 8, Dec. 1982: 6-19.
Examines what is being done in the California prisons to control gangs among the prisoners.

D. RIOTS

Colvin, Mark
The 1980 New Mexico prison riot. Social problems, v. 29, June 1982: 449-463.
"A case history of the 1980 riot at the Penitentiary of NM, based on data gathered from interviews of 299 current and former inmates, guards, and officials. In the early 1970s, the prison was relatively calm, but became increasingly violent and disorderly after 1975. The history of the NM prison from 1975 to 1980 parallels the general shift in United States prisons from inmate solidarity in the late 1960s to increasing violence and fragmentation during the 1970s. The violent outbreak at the Penitentiary of New Mexico is traced to the removal of formal and informal incentives, the failure of coercive control measures, and a breakdown in inmate political cohesiveness that led to competition to establish a violent reputation. Recommendations include administrative reform, the education and political self-development of inmates, and the establishment of rehabilitation programs and positive incentives."

Deroches, Frederick J.
Anomie: two theories of prison riots. Canadian journal of criminology, v. 25, Apr. 1983: 173-190.
"Reviews theories of the causes of prison riots. The powder keg theory is based on the belief that inmates who riot are desperate and angry and that prison conditions contribute to this anger. However, this theory fails to explain why prison riots have increased at the same time that prison conditions have improved. Also, it overpredicts the number of riots that should occur. R. K. Merton's (1938) theory of deviance can be used to suggest that prison riots result from a situation of anomie: Anomie arises from a socially structured situation in which persons from lower strata cannot obtain socially approved goals except through illegitimate means. Inmates who want prison reform but perceive the legitimate channels as nonexistent may resort to rioting. Although this theory explains some riots, it does not account for those in which rioters make no demands. E. Durkheim's (1897) theory of disequilibrium applied to prison riots says that any change that occurs in the organization of the prison riot is an emotional reaction resulting from moral indignation. This theory explains the violence of riots and their increase in the last 3 decades. While reform may increase the likelihood of riots, this occurs only when administrators promise more than can be delivered."

The lessons of Marion: the failure of a maximum security prison: a history and analysis, with voices of prisoners. Philadelphia, American Friends Service Committee [1985] 36 p.

"The criminal justice system that operates Marion needs to examine its ability to continue to function as it has been functioning. Congress needs to exercise its oversight authority over the Bureau of Prisons to determine if Marion and other institutions are being operated in the most humane way possible and to require that alternative approaches be employed."

Millard, P. L. Johnson, J. R. Petrovsky, J. S.

Lessons learned: the Oakdale/Atlanta riots: interviews with BOP (Bureau of Prisons) Wardens Johnson and Petrovsky. Corrections today, v. 50, June 1988: 16-18, 20, 24-25, 102, 130.

"Lessons learned from the 1987 prison riots by Cuban detainees in the Federal Detention Center at Oakdale, La., and the U.S. Penitentiary at Atlanta are discussed by Wardens J. R. Johnson and Joseph S. Petrovsky. Factors contributing to safe release of hostages are discussed including prior staff-inmate coordination and cooperation, professionalism of the hostages, avoidance of the use of force, and skillful negotiators. Roles played by the various agencies involved are described, together with command and communications strategies . . . . The effects of the riots on hostages and staff morale in general are considered, and the beneficial effects of prior staff training on the outcomes are noted. Implications for staff training and for management of prison disorders are discussed."

Sharp, Paul M. Hancock, Barry. Portrey, Max.

Access to territory and etiology of prison riots. Free inquiry in creative sociology, v. 10, Nov. 1982: 147-149.

Presents a model of the role of territoriality, in the specific forms it takes in total institutions, in the development of prison riots. Finds that under normal conditions, prisons have a system in which the formal administrative hierarchy coexists with an informal hierarchy of key guards and inmate leaders, which helps to define spatial access. When a prison administration insists on dealing with inmates as individuals, the informal system breaks down, creating a power struggle among inmates and also makes spatial access insecure; this creates tensions that can cause outbreaks of violence.

Smith, J. Q.

The prediction of prison riots. British journal of mathematical and statistical psychology, v. 33, Nov. 1980: 151-160.

"Reformulates E. C. Zeeman's et al (see Psychological Abstracts, Vol 59:194) model of the escalation of disorder in a prison and the subsequent riot. The present version uses a utility or pay-off approach. By adjusting his model in this way, the present author found a more efficient method of monitoring disturbances. The changes in the monitored variables over the time preceding each of 3 prison riots are discussed and conclusions drawn from the new model."

U.S. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

Federal Bureau of Prisons. Oversight hearing, 98th Congress, 2nd session. Mar. 29, 1984. Washington, G.P.O., 1986. 559 p.

"Serial no. 106"

Includes consideration of the Bureau's FY1985 budget request. Particular attention is given to the U.S. Penitentiary at Marion, IL and the Federal Correctional Institution at Oxford, WI, where killings of prison employees have occurred.

Useem, Bert.

Disorganization and the New Mexico prison riot of 1980. American sociological review, v. 50, Oct. 1985: 677-688.

Suggests that data on the 1980 New Mexico prison riot supports certain aspects of the breakdown model of collective action, which suggests that collective action results from social disorganization and increased levels of discontent. From 1970 to 1975, the State Penitentiary provided inmates with employment opportunities and recreational programs. These integrating activities were sharply curtailed after 1975. As a consequence, inmates experienced strong feelings of deprivation, and interinmate violence increased. Concludes that the 1980 riot reflected the disintegration of the previous 5 yrs.

Useem, Bert. Kimball, Peter A.
States of siege: U.S. prison riots, 1971-1986. New York, Oxford University Press, 1989.
Recently published but not yet received by the Library of Congress.

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A theory of prison riots. Theory and society, v. 16, Jan. 1987: 87-122.

Describes several prison riots that took place over a 20-year period based on case studies of riots that occurred at 5 United States institutions: State Penitentiary of New Mexico in 1980, State Prison of Southern Michigan in 1981, San Quentin Prison in California in 1967, Attica State Correctional in NY in 1971, and Joliet Correctional Center Facility in Illinois in 1975. Two classes of variables are used to explain the variation in these riots: people's dispositions to model their behavior after others' (subject identification), and people's dispositions to take the welfare of others into account. Concludes that such matters as group organization, cohesion, and social control can be illuminated by identification theory.

IV. REHABILITATION OF CRIMINALS

A. GENERAL MATERIALS

American Correctional Association. Committee on Standards.

Guidelines for the development of policies and procedures: adult community residential services. College Park, MD, The Association, 1981. 220 p.

"This volume, one of the series of Guidelines for the Development of Policies and Procedures produced for the American Correctional Association by its Committee on Standards . . . will provide assistance to agencies seeking to develop or to revise their own policies and procedures. By referencing specific standards, the Guidelines also will direct agencies towards those levels of performance required in the accreditation process by the Commission on Accreditation for Corrections."

Bartollas, Clemens.

Correctional treatment: theory and practice. Englewood Cliffs, NJ, Prentice-Hall, c1985. 304 p.

"In this volume, Professor Bartollas has accurately laid out the possibilities for successful correctional treatment. Not only the treatment to be offered but also the organizational requirements for its success are clearly presented. Students who catch a note of excitement from this text will be correct. The challenge is nothing less than to rebuild American corrections. This book specifies the foundation on which this rebuilding must be undertaken."

Bayer, Ronald.

Crime, punishment, and the decline of liberal optimism. Crime & delinquency, v. 27, Apr. 1981: 169-190.

Analyzes "the shifting perspective of liberalism on crime and punishment. A review of the journals of liberal opinion between 1945 and 1975 reveals a growing recognition of the seriousness of urban crime and a profound shift from the rehabilitative ideology to a more punitive response to criminals. The distinction between conservative social thought and the liberal critique of that outlook has thus begun to vanish."

Bouma, Donald H.

The pendulum swings from rehabilitation to punishment. USA today, v. 9, July 1980: 54-57.

Examines the reasons for the decline in the support for rehabilitation of prisoners.

Burger, Warren E.

Let prisoners earn and learn. State legislatures, v. 10, Oct. 1984: 26-27.

"The nation's chief justice believes prisons should be converted into education and production centers, a move that would require changes in many state laws. Here he explains why such efforts should be made."

Davis, Bertha.

Instead of prison. New York, F. Watts, 1986. 128 p. (An Impact book)

Discusses how criminals are charged, sentenced, and incarcerated, the different philosophies and goals behind these measures, and ways criminals are currently rehabilitated outside of prisons.

Denkowski, George C. Denkowski, Kathryn M.

The mentally retarded offender in the state prison system: identification, prevalence, adjustment, and rehabilitation. Criminal justice and behavior, v. 12, Mar. 1985: 55-70.

"Established a current average national estimate of the prevalence of mental retardation (MR) among state prison inmates and examined their adjustment to incarceration and rehabilitative services provided them. Prison administrators from 48 states completed a questionnaire assessing prevalence of MR within the prison system, identification of diagnostic procedure, difficulties encountered by MR inmates, and special services provided for MR inmates. Results indicate that the majority of state prisons assessed inmates for MR, using a cutoff WAIS–R IQ score of 69-70 as the primary indicator of the disability. Findings show that an average of 2% (7,600 inmates) suffered from MR and that the number confined in all types of correctional settings was approximately 12,640, a relatively low figure that was attributed to the emergence of various diversion processes and improved psychometric practice. It is concluded that MR inmates do not adjust well to prison life and that supplemental rehabilitation services for them have not expanded appreciably over the past 2 decades."

Downing, D. M. Stitt, T. R. Murray, M. C.
Career readiness programs for correctional institutions. Journal of correctional education, v. 38, Mar. 1987: 22-24.
"To reduce the current recidivism rate of 28.4 percent for the United States prison population of 450,000, the implementation of a relevant, comprehensive vocational and career readiness program is necessary."

Erez, Edna
Rehabilitation in justice: the prisoner's perspective. Journal of offender counseling, services and rehabilitation, v. 11, spring/summer 1987: 5-19.
"Surveyed 348 prison inmates about their needs or interests in rehabilitation programs, reasons for their needs, whether they deserved treatment, and why. Results suggest that prisoners view rehabilitation and reform as the major purpose of punishment or prison sentence. Need was endorsed most often as fairest criterion for program participation. Inmates strongly espoused client-centered model of rehabilitation."

Farkas, G. M. Hambrick, M.
New partnerships. Corrections today, v. 49, Feb. 1987: 52-54.
"The Federal prison system has forged a new partnership between industrial production activities and education and training programs that benefits both the institution and the inmates."

Gendreau, Paul. Ross, Robert R.
Revitalization of rehabilitation: evidence from the 1980s. Justice quarterly, v. 4, no. 3, 1987: 349-408.
Reviews the literature on offender rehabilitation published between 1981 and 1987, and assesses various types of intervention, ranging from restitution through biomedical.

Hairston, Creasoe Finney.
Family ties during imprisonment: do they influence future criminal activity? Federal probation, v. 52, Mar. 1988: 48-52.
Family programs in correctional settings may represent a significant new strategy for reducing recidivism. Research indicates that there is a positive relationship between active family ties during imprisonment and post-release success.

Jones, Clergue T.
Strategies for reintegrating the ex-offender: a selected bibliography. Washington, G.P.O., 1980. 49 p.

Jorgensen, James D. Hernandez, Santos H. Warren, Robert C.
Addressing the social needs of families of prisoners: a tool for inmate rehabilitation. Federal probation, v. 50, Dec. 1986: 47-52.
Discusses the social, economic, and behavioral changes experienced by families following incarceration of a parent and the implications for rehabilitation. Families of inmates frequently lack adequate information about the conditions of imprisonment, economic resources are strained, contact is lost with the missing parent, and relocation often results in loss of family social supports. These changes result in depression and other symptoms in the parent and in school and behavioral problems in the children. Prison programs to alleviate some of these problems include marital workshops for inmates and their wives, child development classrooms and a parent training class, and parent education programs. Outside programs include crisis intervention programs and support services to inmates and their families. By maintaining family bonds and reducing the effects of imprisonment, such efforts are important rehabilitative tools.

Levine, Mark.
Jail-based inmate programs: a selected bibliography. Washington, G.P.O., 1979. 24 p.

Martin, Carol Ann.
Vocational and educational training for inmates: a selected bibliography. Monticello, IL, Vance Bibliographies, 1981. 14 p. (Public administration series: bibliography P-715)

Martin, Susan E. Sechrest, Lee B. Redner, Robin, eds.

New directions in the rehabilitation of criminal offenders. Washington, National Academy Press, 1981. 498 p.

Provides the final report and conclusions of the Panel on Research on Rehabilitative Techniques, originally formed "to determine whether the available research warranted the conclusion that criminal offenders could be successfully rehabilitated. The report, which follows up on the preliminary findings in "The Rehabilitation of Criminal Offenders: Problems and Prospects," suggests potential directions for new program development and research in the field of rehabilitation of offenders.

McGuire, James. Priestly, Philip.

Offending behavior: skills and strategies for going straight. New York, St. Martin's Press, 1985. 235 p.

Aims to help probation officers, prison social workers, and others who work daily with offenders in their efforts to change offenders' behavior. Materials are provided for exploring offenses or patterns of offense behavior, eliciting and altering offenders' values and beliefs about themselves, developing skills, and attempting to lessen the damage and criminalizing effects of the legal and penal system. The ideology that nothing positive can be done with criminal law violators is challenged.

Orsagh, T. Marsden, M. E.

What works when: rational choice theory and offender rehabilitation. Journal of criminal justice, v. 13, no. 3, 1985: 269-277.

"The currently fashionable statement that 'nothing works' overstates the case against rehabilitation. Rehabilitation efforts may be effective if addressed to specific offender populations delineated on the basis of causal theory."

Orsagh, Thomas. Witte, Ann Dryden.

Economic status and crime: implications for offender rehabilitation. Journal of criminal law & criminology, v. 72, fall 1981: 1055-1071.

Focuses on programs that enhance an offender's economic status in order to evaluate the supposition that certain offender rehabilitation programs reduce recidivistic crime.

Ross, Robert R. Fabiano, Elizabeth A.

Correctional after thoughts: programs for female offenders. Ottawa, Canada, Ministry of the Solicitor General of Canada, 1985. 170 p.

Literature review examines correctional services and programs for female offenders in the U.S. and Canada. Finds that programs for women are poorer in quantity, quality, variability, and availability than those for men.

Rotman, Edgardo.

Do criminal offenders have a constitutional right to rehabilitation? Journal of criminal law & criminology, v. 77, winter 1986: 1023-1068.

Article concludes that "to subject inmates to the harmful effects of imprisonment without allowing them any possibility of counteracting these harms is additional and unlawful punishment. Without opportunities for rehabilitation at the educational, labor or therapeutic levels, the warehoused offender inevitably deteriorates."

Sechrest, Lee. White, Susan O. Brown, Elizabeth D., eds.

The rehabilitation of criminal offenders: problems and prospects. Washington, National Academy of Sciences, 1979. 274 p.

Provides the report and conclusions of the first phase of research by the Panel on Research on Rehabilitative Techniques. This team of specialists was formed to address "questions concerning the effectiveness of rehabilitation programs within correctional institutions." A report on the Panel's second phase of work appears in the 1981 work entitled "New Directions in the Rehabilitation of Criminal Offenders.

Smith, Alexander B. Berlin, Louis.

Treating the criminal offender. 3rd ed. New York, Plenum Press, c1988. 426 p. (Criminal justice and public safety)

Contents.--Crime, social attitudes, and causation theories.--Probation and parole.--Punishment versus treatment.--Problems and issues in corrections.--Treatment modalities: problems and issues.--Schools of casework and therapy.--Group therapies: traditional and innovative.--Drug addiction, crime, and treatment.--Sexual offenses and their treatment.--

The violent offender.--Alcoholism and crime.--Crime and marital problems, and the female offender.--Gambling, white-collar crime, and organized crime.--Current trends in corrections.--Research in corrections.--Summary and sources.

Smith, Robert Reed.
Community board corrections, work release programs, and study release programs. Monticello, IL, Vance Bibliographies, 1980. 11 p.

Sullivan, Dennis C.
The mask of love: corrections in America, toward a mutual aid alternative; foreword by Larry Tifft. Port Washington, NY, Kennikat Press, 1980. 181 p. (Multi-disciplinary studies in the law) (National university publications)

Contents.--Part one: The nature of corrections.--Part two: The end of rehabilitation: movement toward professional tyranny.--Part three: Re-examining the foundations for safety: prison, punishment, power.--Part four: Mutual aid: the restoration of connectedness through needs, literacy, hands, free agreement.

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on National Penitentiaries.
Offender rehabilitation act. Hearing, 92nd Congress, 2nd session, relating to the nullification of certain criminal records, S. 2732. Washington, G.P.O., 1973. 198 p.

Hearings held Feb. 3, 15, and 23 and Mar. 15, 1972.

U.S. General Accounting Office.
Department of Labor's past and future role in offender rehabilitation. Washington, 1975. 48 p.

Reviews the efforts of the Dept. of Labor "to prepare offenders for life outside prison walls and reduce recidivism through educational, vocational, and employment opportunities."

Rehabilitating inmates of Federal prisons: special programs help, but not enough (Bureau of Prisons, Department of Justice); report to the Congress by the Comptroller General of the United States. [Washington] 1973. 64 p.

Reports "on the limited success of the Bureau of Prisons, Department of Justice, in meeting rehabilitation objectives established to prepare Federal offenders to re-enter society."

U.S. President's Task Force on Prisoner Rehabilitation.
The criminal offender--what should be done? The report of the President's Task Force on Prisoner Rehabilitation. Washington, For sale by the Supt. of Docs., G.P.O., 1970. 24 p.

Results of a task force study on the effectiveness of prisoner rehabilitation programs, and potential improvements of Federal efforts in this area.

VandenHaag, Ernest.
Could successful rehabilitation reduce the crime rate? Journal of criminal law & criminology, v. 73, fall 1982: 1022-1035.

Contends that "our only hope for reducing the burgeoning crime rate lies in decreasing the expected net advantage of committing crimes (compared to lawful activities) by increasing the cost through increasing the expected severity of punishments and the probability of suffering them."

Veneziano, Carol A.
Prison inmates and consent to treatment: problems and issues. Law and psychology review, v. 10, 1986: 129-146.

Case law review examines the legal status of a prisoner's right to treatment and right to refuse treatment. Finds that the degree of consent necessary for inmate participation in programs is determined by: the degree of potential danger for the inmate, balanced against the state's interest in rehabilitating him; and whether or not constitutional rights are violated.

B. GOALS

Bush, John M.

Criminality and psychopathology: treatment for the guilty. Federal probation, v. 47, Mar. 1983: 44-49.

"There is a large group of prison inmates for whom irresponsible thinking and acting is a form of psychopathology, writes . . . [the author]. For these people, learning to be responsible must be the primary goal of treatment, he states. A residential treatment program which focuses attention on the phenomenology or subjective patterns of the clients' experience, and which utilizes self-directed methods of cognitive and behavioral change, can have positive results."

Coffey, O. D.

TIE: Integrating training, industry and education. Journal of correctional education, v. 37, Sept. 1986: 104-108.

"A review of the offender, institutional, and societal goals of training, industry, and education indicates much overlap among them. Some of these goals include instilling good work habits; providing work experiences and credentials; increasing readiness for learning and training; reducing idleness; and increasing future employability and economic independence . . . . An approach combining training, industry, and education may provide a better and more productive means of returning inmates to the community successfully than the more common approach in which the three areas work in isolation and often in competition."

Gest, Ted.

Teaching convicts real street smarts. U.S. news & world report, v. 102, May 18, 1987: 72.

"Overcrowding in the nation's prisons is forcing wardens to review and refine their training and education programs."

Gibbons, Don C.

The limits of punishment as social policy. [San Francisco?] National Council on Crime and Delinquency, 1987. 22 p.

"Discusses the failure of a singular reliance on punishment to deter crime. Professor Gibbons suggests that greater consideration be given to alternatives to incarceration and properly focus our attention on the broader causes of crime."

Prepared under a grant from the Edna McConnell Clark Foundation.

Katz, Howard A.

Correcting corrections: a few suggestions. Corrections digest, v. 15, Aug. 1, 1984: 1-4.

"In correcting corrections, alternatives to imprisonment, maximum security facilities, and traditional prison management techniques must be considered. Any changes made must be accomplished without detracting from the primary purpose of corrections--the protection of society."

C. EVALUATION

Beck, James L.

An evaluation of Federal community treatment centers. Federal probation, v. 43, Sept. 1979: 36-40.

Assesses "the effectiveness of community treatment centers in meeting their primary purpose--aiding the transition of the offender into the community and ultimately reducing recidivism."

Blair, Louis H.

Monitoring the impacts of prison and parole services: an initial examination. Washington, Urban Institute, 1977. 71 p. (An Urban Institute paper on state and local government; 5039-2)

"This report on procedures for monitoring prison and parole service outcomes is one of a series of reports about ways to measure the outcomes of basic state government services. . . . This work focuses on the outcomes (or end results) that a state or local agency should monitor and on the procedures for collecting data on these outcomes on a regular basis."

Burger, Warren E.
What's wrong with America's prisons and what can we do to improve them? Corrections digest, v. 15, Feb. 1, 1984: 1, 7-10.
Former Chief Justice of the U.S. Supreme Court discusses the failure of U.S. prisons to rehabilitate offenders, and offers suggestions to improve the efficacy of current programs."

Cei, Louis B.
Prison rehabilitation programs do work. USA today [magazine] v. 112, July 1983: 55-57.
Lists a number of types of rehabilitation programs for convicted criminals that have proven to be effective.

Chaneles, Sol.
Prisoners can be rehabilitated--now. Psychology today, v. 10, Oct. 1976: 129, 131-132, 134.
"More jails won't solve the crime problem. Reform works better than punishment, and it even costs less."

Colson, Charles.
Crime and restitution: the alternative to lock-them-up liberalism. Policy review, no. 43, winter 1988: 14-18.
Former Nixon aide and Watergate offender argues that imprisonment has failed as a devise to rehabilitate criminals and that a more humane and practical solution for nonviolent offenders would be restitution.

Dowell, David A. Klein, Cecilia. Krichmar, Cheryl.
Evaluation of a halfway house for women. Journal of criminal justice, v. 13, no. 3, 1985: 217-226.
Evaluates a halfway house for female offenders in Long Beach California, using information about graduates from 1972-1977 compared to a matched group of female Federal offenders. Results show that the halfway house was successful in reducing the number and severity of offenses. Author suggests that the halfway house gives offenders an advantage in successfully returning to society.

Field, G.
Cornerstone Program: a client outcome study. Federal probation, v. 49, June 1985: 50-55.
"This description of Oregon's Cornerstone Program, a prerelease treatment program for chemically dependent recidivists, also reports on client outcome studies."

Froun, David.
Crime and punishment. Saturday night, v. 98, Oct. 1983: 11-13.
"After 150 years of attempting to reform criminals, experts are reluctantly concluding that rehabilitation doesn't work."

Halasz, Ida. Behm, Karen.
Evaluating vocational education programs in correctional institutions: a handbook for corrections educators. Columbus, OH, National Center for Research in Vocational Education, 1982. 130 p.
"Correctional educators have become increasingly aware of the need to obtain credible information for accountability and improvement of vocational education programs. Vocational education is often viewed as an intervention, as it provides inmates with occupational skills that will hopefully deter their return to prison. However, there are other outcomes that are often used in the evaluation of these programs, such as employability skills, career development, and self-esteem. Regardless of the outcomes selected, corrections educators need information for improving the quality of their vocational education programs . . . . [This] handbook guides the users' introduction to and understanding of the evaluation process through the use of a case study, flowcharts, and checklists."

Khatibi, M.
Curriculum for life skills training programs in a correctional setting. Journal of correctional education, v. 39, Sept. 1988: 116-120.
"This article discusses the Life Skills training program for 360 first felony offenders aged 14 to 24 at the Hillborough Correctional Institution in Balm, Florida. It covers problem areas, techniques used, and an evaluation of its effectiveness."

Kroll, Michael A.
Prisons for profit. Progressive, v. 48, Sept. 1984: 18-22.

Contends that corrections institutions "don't correct anything. They debilitate people and return them to a competitive society knowing that they can't compete. They vilify self-determination and label those who seek to habilitate themselves as seditious malcontents."

Myers, Samuel L., Jr.
The rehabilitation effect of punishment. Economic inquiry, v. 18, July 1980: 353-366.

"The putatively beneficial effect of punishment on criminal offenders is examined by estimating a logistic specification of a two-period model of optimal participation in illegitimate and legitimate activities. Estimates are obtained utilizing a sample of parolees released from all adult correctional institutions in the United States during 1972. The conclusion would seem to be that incarceration is not substantially effective in rehabilitation efforts and may even have a small opposite to that intended: increased punishment may increase optimal participation in crime."

Sedgwick, Jeffrey Leigh.
Deterring criminals: policy making and the American political tradition. Washington, American Enterprise Institute for Public Policy Research [1980] 50 p. (American Enterprise Institute for Public Policy Research. AEI studies 280)

Investigates "whether microeconomics or welfare economics can generate effective and constitutional solutions to the problem of crime. Currently, economic models of deterrence and criminal motivation are gaining support. At the same time, there is a growing realization that attempts at rehabilitation have shown little success."

VandenHaag, Ernest.
Prisons cost too much because they are too secure. Corrections magazine, v. 6, Apr. 1980: 39-43.

Suggests ways of making prisons more economical to build and maintain, and proposes that "if properly organized, prison work could be a major financial and rehabilitative benefit to prisoners while greatly decreasing government expenses for imprisonment."

Wilson, James Q.
"What works?" revisited: new findings on criminal rehabilitation. Public interest, no. 61, fall 1980: 3-17.

Reviews the controversy over the benefits of rehabilitation.

D. COMMUNITY BASED PROGRAMS

Callison, Herbert G.
Introduction to community-based corrections. New York, McGraw-Hill, c1983. 379 p. (McGraw-Hill series in criminology and criminal justice)

Contents.--1. Guilty! now what?--2. History of community-based corrections.--3. Corrections focusing on the community: 1980.--4. Jails.--5. Probation.--6. Preparing the offender for the community.--7. Community assistance for the offender.--8. The transition to the community.--9. Community-based residential programs.--10. Parole.--11. Community-based programs for juveniles.--12. Reflections from the field.--Epilogue.

Clear, Todd R. O'Leary, Vincent.
Controlling the offender in the community: reforming the community supervision function. Lexington, MA, Lexington Books, c1983. 189 p.

Contents.--Reform and change in community supervision.--The purposes of community supervision.--Some principles for implementing risk control.--Risk control and the supervision officer.--The objectives-based case record.--The function of line management.--Using objectives-based community supervision as an administrative tool.--Conclusion.

McCarthy, Belinda Rodgers. McCarthy, Bernard J., Jr.
Community-based corrections. Monterey, CA, Brooks/Cole Pub. Co., c1984. 432 p.

Contents.--1. A reintegrative approach to corrections.--2. Diversion programs.--3. Pretrial release programs.--4. Probation.--5. Restitution and community service programs.--6. Temporary release programs.--7. Halfway houses.--8. Parole.--9. Problems and needs of female offenders.--10. Programs for juveniles.--11. Problems and needs of drug- and alcohol-abusing offenders.--12. Volunteers, paraprofessionals, and ex-offenders.--13. Planning for the future.

Riley, Richard W.
Crisis in corrections: the role of the community. Corrections digest, v. 15, Feb. 29, 1984: 4-6.
Former governor of South Carolina writes that "there is no issue facing us today that poses a greater challenge than the crisis in corrections. If we are to fulfill the most basic obligation of government--the protection of our people--we want and need sure and swift punishment of violent and repeat offenders. Yet, we have critically overcrowded prisons and do not have the money to build new prisons fast enough. This is our present dilemma!"

Sandhu, Harjit S.
Community corrections: new horizons, with two chapters on drug abuse by Tejindar S. Sandhu; with forewords by Elmer H. Johnson and David E. Smith. Springfield, IL, C. C. Thomas, c1981. 361 p.
"This thoughtful and timely text explores the past, present and future of community-based corrections. The history and rationale of community corrections; community-correctional system interactions; probation, parole, and pardon; various types of programs; and assessments of effectiveness are presented. The book also features special chapters on drug abuse problems, programs, and their connection to community corrections."

The Transition from prison to employment: an assessment of community-based assistance programs. Washington, U.S. National Institute of Law Enforcement and Criminal Justice, 1978. 60 p. (National evaluation program, phase 1 report)
"Assesses the present state of knowledge regarding community-based programs which provide employment services to prison releasees. More than 250 such programs exist and offer a wide range of services, including counseling, work orientation, training, job development, job placement and follow-up assistance after placement. These services are provided because the acquisition of employment is often considered essential for a releasee's successful adjustment to a crime-free life in the community."

E. WORK PROGRAMS

Andersen, Brian David. Andersen, Kevin.
Prisoners of the deep. San Francisco, Harper & Row, 1984. 150 p.
Describes a rehabilitation program at Chino Prison in California, called Vocational Diver Training, for criminals convicted of crimes ranging from drug possession to murder. Book chronicles a year's training of inmate's to become commercial divers, and details the factors that make this program so successful -- it has a recidivism rate of only 6%.

Auerbach, B.
New prison industries legislation: the private sector re-enters the field. Prison journal, v. 62, autumn/winter 1982: 25-36.
Article reviews changes in Federal and State legislation that led to the resurgence of private sector involvement in prison industries. Finds that the future of the public/private partnerships made possible by these statutes may depend upon the creation of financial incentives to encourage more private sector businesses to explore the possibilities available through prison industries.

Burger, W. E.
More warehouses, or factories with fences? New England journal of prison law, v. 8, winter 1982: 111-120.
Article contends that creating prison industries with incentives for good performance would accomplish the dual objective of training inmates in gainful occupations and lightening the load of maintaining the prison systems.

Cullen, Francis T.
The privatization of treatment: prison reform in the 1980's. Federal probation, v. 50, Mar. 1986: 8-16.
"Argues that a viable avenue of prison reform is the privatization of correctional treatment programs--a reform that is politically feasible because it capitalizes upon both

the continuing legitimacy of the rehabilitative ideal and the emerging popularity of private sector involvement in corrections. While a number of concerns about profit-making in prisons must be addressed, the author contends, the major advantage of privatizing treatment is that it severs the potentially corrupting link between custody and treatment and thus helps to structure interests within the prison in favor of effective correctional rehabilitation."

Work as an avenue of prison reform. New England journal on criminal and civil confinement, v. 10, winter 1984: 45-64.

"Emphasizing the work ethic in prison, particularly employing inmates in regular jobs at decent wages is worth pursuing; such a reform can secure broad-based ideological support and may refashion the prison social order in a manner conducive to both inmate and custodial interests."

DeBor, S. T.

Vocational program participation and recidivism. Lansing, MI, Michigan Dept. of Corrections Facilities, 1984. 55 p.

"This Michigan study examines whether the likelihood and seriousness of recidivism is affected by the type, nature, and extent of the ex-offender's involvement in vocational training."

Eckerd, Jack.

Responsibility, love, and privatization: a businessman's guide to criminal rehabilitation. Policy review, no. 45, summer 1988: 52-55.

Describes a privately run state sponsored corporation called PRIDE, which runs all of Florida's prison industries, turning a profit for state taxpayers.

Funke, G. S. Wayson, B. L. Miller, N.

Assets and liabilities of correctional industries. Lexington, MA, Heath Lexington Books, 1982. 164 p.

Traces prison industry history in the United States, evaluates the free-venture model, examines legal issues, and recommends ways to improve correctional industry operation.

Goodman, S.

Prisoners as entrepreneurs: developing a model for prisoner-run industry. Boston law review, v. 62, Nov. 1982: 1163-1195.

Finds that a prisoner-run industry created and operated in accordance with the model proposed in this article would provide and effective and realistic work experience, such that participants would be more easily reintegrated into society upon release.

Grieser, Robert C. Crawford, Thomas McCrae. Funke, Gail S.

The development of jail industries. Washington, U.S. National Institute of Corrections, 1985. 22 p.

Presents the results of a telephone survey of jail administrators or deputies in 74 jurisdictions. Finds that more jail industries, both existing and planned, are located in the larger jails. Administrators of active industries reported many advantages with few problems. Benefits of jail industries included reduction in inmate idleness, facilitation of management, the value of training to prisoners, and cost reductions.

Grissom, G. R. Louis, C. N.

Evolution of prison industries. Corrections today, v. 43, Nov./Dec. 1981: 42-43, 46-48, 50.

In tracing the evolution of prison industry programs, this article presents findings from a study of a prison industry program model and offers suggestions for the future. Authors contend that directions for future research should include documentation of the experiences of pioneering States in a form useful to other States, and analysis of the economic viability of 'real-world' prison industries, and a controlled environment to confirm and cross-validate earlier finding regarding institutional and individual impact.

Hershberger, S. L.

Vocational education: preparing for life outside. Corrections today, v. 49, Aug. 1987: 128, 130-132.

"This article describes a plan for a college-credit vocational curriculum, instruction, and administration in New Mexico's correctional institutions."

Schloegel, Judith M. Kinast, Robert L.
From cell to society. Grand Rapids, MI, Eerdmans, c1988. 122 p.
Describes a program intended to improve the transition of the convicted offender from prison to society. The program, called Liberation of Ex-Offenders Through Employment Opportunities (LEEO), represented a unique integration of the efforts of government agencies and a Christian ministry.

Sexton, G. E.
Industrial prisons: a concept paper. Prison journal, v. 62, autumn/winter 1982: 13-24.
Article focuses on the concept of the industrial prison by identifying both the assumptions upon which it rests and a number of the significant policy issues which must be faced if it is to be implemented.

Slater, Robert E.
Private jobs for public offenders. Business and society review, no. 43, fall 1982: 32-36.
Contends that "the rehabilitation of prisoners is another such area in which the corporate community should become involved. Sufficiently burdened with the task of balancing current social responsibilities with the need to generate profit, executives may be quick to offer a firm 'no thank you.' But the expertise of the business community is in effect indispensable if this problem is to be solved."

Snellenburg, Sidney C.
The Lima Rehab Project: a program that benefits all. Judicature, v. 72, Dec. 1988-Jan. 1989: 251-252.
Describes a successful program in Lima Ohio, that uses inmates to rehabilitate houses, resulting in improved neighborhoods and better skills for prisoners.

U.S. General Accounting Office.
Improved prison work programs will benefit correctional institutions and inmates; report to the Attorney General. Washington, 1982. 64 p.
"GAO-GGD-82-37, June 29, 1982"
"A basic concept of the Federal Prison system is that the idle time of inmates should be kept to a minimum. Inmates are to be kept busy in several ways: working at tasks to keep the institutions operating, such as facility maintenance and food service; industrial work programs; educational programs; and recreation . . . . Participation in industrial work programs provides greater opportunities for inmates to acquire job skills and work habits important for employment in the private sector. GAO found untapped opportunities to expand program participation. Doing so could reduce the problem of overassignment to institutional tasks and taxpayers would be spared some of the burden of prison costs. The report contains several recommendations for bringing this about."

Wiegand, Steve.
The dilemma of prison labor: Federal and State rules stymie meaningful work for prison inmates. California journal, v. 16, Jan. 1985: 23-25.
Describes difficulties in instituting inmate work programs in California prisons, due to regulations prohibiting competition with private industry or sale of prison-made goods across state lines.

Work in American prisons: the private sector gets involved. Washington, U.S. National Institute of Justice, 1988. 113 p. (Issues and practices in criminal justice)
"Describes current and historical developments in private-sector prison industries, analyzes costs and benefits for both the public and the private sectors, and suggests strategies for future growth. The information presented is intended to help private- and public-sector managers weigh the costs and benefits of private-sector prison industries and alert policy makers to the issues and problems in need of attention if these ventures are to expand in the future.

F. THERAPEUTIC AND EDUCATIONAL PROGRAMS

Anderson, D. B.

Relationship between correctional education and parole success. Journal of offender counseling services and rehabilitation, v. 5, spring/summer 1981: 13-25.

To determine the impact of vocational or academic training on post release or parole success, researchers reviewed the files of 238 ex-inmates of the Vienna Correctional Center in Illinois. They concluded that the vocational training and education did improve postrelease success and ability to retain employment.

Austin, Mark C.

Inmate education: a wise use of correctional funds. Corrections today, v. 49, Aug. 1987: 42, 44-45.

Former inmate writes that "[Prison] education is not a perfect answer. Nevertheless, it can and has worked. College education is successful, not because it changes people, but because it teaches people what changes are necessary and helps them change themselves. Education is considered good because of personal development from positive interaction with oneself and others; hence it follows that improving the individual, no matter who or where that person is, will ultimately help all society."

Barton, William I.

Drug histories and criminality of inmates of local jails in the United States (1978): Implications for treatment and rehabilitation of the drug abuser in a jail setting. International journal of the addictions, v. 17, Apr. 1982: 417-444.

A US Department of Justice survey of 158,400 inmates (mean age 25.3 yrs) of local jails showed that 68% had used such drugs as heroin, cocaine, marihuana, amphetamines, and barbiturates outside a treatment program, and without a doctor's prescription, at least once; 21% of the inmates were under the influence of drugs at the time of the offense. Implications for treatment and rehabilitation of incarcerated drug users are discussed in terms of existing services, screening, medical services, treatment quality, and educational programs.

Bellorado, Donna.

Making literacy programs work. Washington, U.S. Dept. of Justice, 1986. 2 v.

Presents results from a survey of prison literacy programs operating across the United States. Volume I describes noteworthy programs and discusses strategies and methodologies. Volume II is a directory of institutional literacy programs, listed by state.

Bleick, Catherine R. Abrams, Allan I.

The Transcendental Meditation Program and criminal recidivism in California. Journal of criminal justice, v. 15, no. 3, 1987: 211-230.

Finds that in a sample program by the California Dept. of Corrections, those inmates who voluntarily learned TM had more favorable parole outcomes and recidivism rates, particularly among those who continued meditating after release.

Casey, V.

Education of prisoners: a selected bibliography of journal articles, 1984-1987. Monticello, IL, Vance Bibliographies, 1988. 11 p.

Correctional Education Association.

Lobbying for correctional education: a guide to action. Washington, The Association, 1983.

Provides basic information on correctional education programs, in order to assist individual, state, and regional lobbying on behalf of the Correctional Education Association. Includes facts about correctional education, definition of correctional education concepts and roles, a description of the Correctional Education Association, and information on the U.S. Congress and the lobbying process.

Correctional education programs for inmates. Washington, U.S. National Institute of Law Enforcement and Criminal Justice, 1979. 123 p. (National evaluation program, phase 1 report)

"On the whole, the general state of education in correctional institutions has improved, according to this assessment. A major problem is lack of funding, which is reflected in the quality of administration, lack of resources, and inability to offer meaningful programs on a continuing basis. Since funding is often from Federal sources or various 'soft' sources, continuity is a problem. The pressure of constantly reapplying for grant money diverts time and resources from the main purpose of the inmate education programs."

Davidson, H. S.
Meaningful literacy education in prison? Problems and possibilities. Journal of correctional education, v. 39, June 1988: 76-81.

"Interdisciplinary approaches to literacy education provide students with an opportunity to improve a broad range of literacy skills while studying substantive and interesting content . . . . [Author] acknowledges that although a curriculum that integrates substantive content with an expanded sense of language development cannot in itself overcome impediments to effective instruction, educators must develop such alternatives to increase the likelihood of effective literacy education."

Duguid, S.
Prison education: a case for the liberal arts. Journal of correctional education, v. 38, Sept. 1987: 108-112.

"An argument is presented for a liberal education firmly grounded in the humanities as the most effective educational approach for encouraging cognitive/moral development in adult offenders . . . . The paper reviews the argument for the link between cognition (reasoning) and criminal activity and describes the operation and evaluation of a university level prison education program in British Columbia, Canada. The results of a follow-up study of program graduates are reviewed and linked to the nature of the theoretical approach."

Edwards, José B.
Assessing treatability in drug offenders. Behavioral sciences and the law, v. 6, no. 1, 1988: 139-148.

Describes the factors used by clinicians to assess treatability in offenders seeking statutory drug treatment benefits.

Gehring, T.
Connection between democracy and cognitive processes in correctional education. Journal of correctional education, v. 39, June 1988: 62-69.

"Although a large body of research literature indicates that inmates can act responsibly when entrusted with participatory authority for aspects of their lives, these findings are not taken seriously by many corrections practitioners because they run counter to prevalent coercive and behavioral paradigms."

Knopp, Fay Honey.
Retraining adult sex offenders: methods and models. Syracuse, NY, Safer Society Press, 1984. 319 p.

Describes adult sex-offender treatment programs in the U.S, with detailed descriptions of two community-based, private sector, non-residential treatment programs in Washington State and Connecticut. Suggested guidelines and risk criteria are provided for helping to determine whether the offender can be treated safely in the community, or if a more structured residential setting is required. Other factors that determine community versus residential treatment are also discussed.

Larson, K. A.
Remediating problem solving skills. Journal of correctional education, v. 39, June 1988: 70-74.

"Although offenders vary greatly in their social problem solving abilities, there are apparently common thinking 'errors' which can be remedied in a group setting and through direct instruction . . . . [Research] to date suggests that training high-risk youth and young adults in social problem solving will increase social effectiveness, socially acceptable goal attainment, and prosocial behaviors."

Lipton, D. S. Wexler, H. K.
Breaking the drug-crime connection: rehabilitation projects show promise. Corrections today, v. 50, Aug. 1988: 144, 146, 155.

Describes the efforts of Narcotic and Drug Research, Inc. (NDRI) in providing technical assistance and national coordination for a project designed to assist States in the development and implementation of comprehensive drug treatment strategies for prison inmates.

Oberst, Margaret.
Inmate literacy programs: Virginia's "no read, no release" program. Lexington, KY, Council of State Governments, 1988. 7 p.
"In addition to addressing inmate literacy programs in general, this report highlights Virginia's efforts in implementing a "no read, no release" incentive-based program aimed at decreasing prison inmate illiteracy."

Schwitzgebel, R. Kirkland.
Legal aspects of the enforced treatment of offenders. Rockville, MD, U.S. National Institute of Mental Health, Center for Studies of Crime and Delinquency [for sale by the Supt. of Docs., G.P.O., 1979] 133 p. (U.S. Dept. of Health, Education, and Welfare. DHEW publication no. (ADM) 79-831 Crime and delinquency issues: a monograph series)
Clarifies "legal issues involved in the therapeutic treatment of patients and prisoners after their initial classification and during their progress in the mental health and criminal justice systems."

Simms, Brian E. Farley, Jeanne. Littlefield, John F.
Colleges with fences: a handbook for improving corrections education programs. Columbus, OH, National Center for Research in Vocational Education, 1987. 82 p.
Outline strategies for improving post-secondary correctional vocational educational programs.

Toch, Hans.
Regenerating prisoners through education. Federal probation, v. 51, Sept. 1987: 61-66.
Asserts that case histories demonstrate that educational experiences can promote positive adjustment, even among prison inmates whose coping capacity is limited and whose careers include chronic misbehavior.

U.S. Department of Justice. Federal Prison System.
Education for tomorrow. Washington, U.S. Department of Justice [1980?] 34 p.
"This brochure is designed to acquaint interested individuals with the organization and functions of education programs in the Federal Bureau of Prisons. The goals, program offerings, past achievements and future projections are described. In addition, Appendix I lists all the occupational programs by institution and Appendix II lists the 10 most frequently offered occupational programs in the Federal Prison System."

Washington State. Office of Financial Management.
The sex offender treatment program. Olympia, WA [The Office] 1985. 44 p.
Washington State has been treating sex offenders for over 25 years, but it is still not known if treatment is any better than incarceration in reducing recidivism. The selection of offenders for treatment has been a legal decision, not relevant to treatment objectives and current medical understanding of sex offenders. This report describes and evaluates strategies to resolve the problems with sex offender treatment programs, including reducing the number of offenders in treatment, concentrating on sexual deviants, improving physical security, and updating the treatment model and staffing patterns.

Wexler, Harry K. Williams, Ronald.
The Stay 'N Out therapeutic community: prison treatment for substance abusers. Journal of psychoactive drugs, v. 18, July-Sept. 1986: 221-230.
Evaluates the effectiveness of a therapeutic community program that has operated in the New York State prison program for over ten years.

Webster, Christopher D.
Compulsory treatment of narcotic addiction. International journal of law and psychiatry, v. 8, no. 2, 1986: 133-159.
Explores the issue whether narcotic addicts can be successfully treated through coercive measures. Finds that neither the prison view nor the hospital view is satisfactory for all addicts or drug abusers. Also finds that whether or not it is possible to establish programs permitting some degree of coercion depends on the prevailing political and economic climate.

Yarborough, Thelma B.
Some inmate viewpoints on teaching and curriculum in community college programs. Journal of correctional education, v. 36, no. 3, 1985: 92-93.

Literature review indicates the absence of a research base for devising and operating community college programs in prisons. This conclusion is based on an examination of 350 books, documents, unpublished manuscripts, and interviews conducted at 55 facilities in 27 U.S. states.

How Can the Federal Government Reform Prisons and Jails in the United States?

A Guide to Information Sources on the 1989-1990 High School Debate Topic

Elizabeth S. Lane
Bibliographer, Government and Law
Library Services Division

March 1989

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A GUIDE TO INFORMATION SOURCES
on the 1989-1990
High School Debate Topic

INTRODUCTION

This research guide identifies sources of information on Federal prison and jail reform policies and related topics that will be discussed by high school debaters. It describes reference and research tools and suggests particular search strategies that can be used to retrieve information on these topics. The guide is divided into two parts; the first part describes basic research materials, and the second describes [illegible] relating to the issue of correctional policy.

In some cases, search terms are provided for each resolution of the debate topic. In other cases, only a few general terms on the topic are provided. These search terms are not exhaustive. The primary terms are included to help the debaters begin their search for supporting materials on the range of issues relating to Federal [illegible] about correctional institutions.

The topics of overcrowding, violence, and rehabilitation in correctional institutions are closely linked. As debaters focus on individual resolutions, and on the general issue of prison and jail reform, they will also need to scan selected relevant search terms listed under the other resolutions.

In this guide, the resolutions are referred to in the abbreviated form listed below in parentheses following each resolution.

PRISON AND JAIL REFORM: How can the Federal Government reform prisons and jails in the United States? **(General)**

> **RESOLVED**: That the Federal Government should adopt a nationwide policy to decrease overcrowding in prisons and jails in the United States. **(Overcrowding)**
>
> **RESOLVED**: That the Federal Government should enact a nationwide policy to decrease violence in prisons and jails in the United States. **(Violence)**
>
> **RESOLVED**: That the Federal Government should expand rehabilitation programs for convicted criminals in the United States. **(Rehabilitation)**

Although printed sources are emphasized in this guide, debaters should also take note of the Federal, State, and local agencies, and the non-governmental organizations listed in the section on further contacts at the end of the guide. These offices may be able to furnish additional information or publications on various policy options.

RESEARCH SOURCES

This is a list of key information resources described in this guide, and the page where each is described.

American Statistics Index 493
Bell and Howell Newspaper Indexes 490
Books in Print 487
BRS 490
Business Periodicals Index 495
CIS Index 492
Congressional Index 493
Congressional Quarterly Weekly Report 492
Congressional Record 492
Criminal Justice Abstracts 496
Criminal Justice Periodical Index 496
DataTimes 490
Depository Libraries 491
DIALOG 490
Digest of Public General Bills and Resolutions 492
Educational Resource Information Clearinghouse (ERIC) 491
Encyclopedia of Associations 488
Government Reports Announcements and Index 491
Index To Legal Periodicals 489
Library of Congress Subject Headings 487
Magazine Index 488
Major Legislation of the Congress 492
Monthly Catalog of United States Government Publications 491
National Criminal Justice Reference Service Database 496
National Journal 492
National Newspaper Index 489
National Prisoner Statistics 495
New York Times Index 489
NEXIS 490
Official Washington Post Index 489
Public Affairs Information Service 489
Reader's Guide To Periodical Literature 489
Sears List of Subject Headings 487
Social Science Citation Index 496
Social Sciences Index 496
Sourcebook of Criminal Justice Statistics 495
Statistical Abstract of the United States 493
Statistical Reference Index 493
University Microfilms Newspaper Indexes 490
VUTEXT 490
Wall Street Journal Index 489
Weekly Compilation of Presidential Documents 491
WilsonLine 490

PART I: GENERAL REFERENCE SOURCES

BOOKS

Many libraries around the country, particularly large academic and research libraries, use Library of Congress classification numbers to organize their collections, and Library of Congress subject headings in their catalogs. To learn how books on U.S. correctional policies are categorized in these libraries, consult the two-volume guide, *Library of Congress Subject Headings*. It is usually kept near the card catalog, or near the terminals for an automated catalog. The most relevant LC subject headings for research on correctional institutions are listed below:

General:	Corrections
	Correctional institutions
	Prisons
	Jails
	Prison reformers
	Punishment
	Probation
	Parole
Overcrowding:	Prisons--overcrowding
	Prisons--construction
Violence:	Prison violence
	Prison homicide
	Prison gangs
	Prison riots
	Prisons and race relations
Rehabilitation:	Rehabilitation of criminals
	Rehabilitation of juvenile delinquents
	Community-based corrections
	Work release of prisoners
	Prison furloughs

In many school and public libraries, books are arranged by the Dewey Decimal classification system. In these libraries, books are usually assigned subject headings from the *Sears List of Subject Headings*, also generally found near the card catalog. The most relevant terms from this resource are Correctional Institutions, Prisons, Prison Reform, Prisoners--Education, Probation, and Punishment.

If you have trouble locating books that are listed here or in other bibliographic sources, ask your librarian about *Books in Print* and about interlibrary loan. *Books in Print* will be useful in identifying the addresses of publishers for the purchase of materials, and in identifying additional and recently published books. Look particularly under the terms: Prisons--United States, Prisoners, Prison sentences, and Prison riots. Interlibrary loan may make it possible for your library to borrow materials you have identified, but that your library does not have available, from other libraries.

ENCYCLOPEDIAS AND DIRECTORIES

Encyclopedias

Most libraries carry a selection of encyclopedias; these can be an excellent starting point in gathering basic background information on a topic. Subject headings vary from one publication to another; begin by checking the index volume(s) for basic keywords like "prisons," "rehabilitation of criminals," and "corrections." Encyclopedia articles often have bibliographies appended, which can be used to locate additional information on the topic.

Encyclopedia of Associations

This annual reference source includes information on over 21,000 nonprofit American membership organizations, ranging from social welfare and public affairs organizations through labor unions and professional associations. The *Encyclopedia of Associations* consists of three volumes: the first volume, which has three parts, includes descriptive entries, as well as subject, name, and keyword indexes; the second volume contains indexes allowing searches by geographic location or executive officers' surnames; and the third volume has information on newly formed and newly found associations. This reference source can be used to locate a variety of nonprofit, nongovernmental organizations in the area of criminal justice and corrections research.

Directory of Directories

This publication serves as a guide to the many catalogs, encyclopedias, checklists, and other compilations of information that exist in print. Any publication which includes addresses of individuals or organizations is eligible for inclusion in this resource. It lists a wide range of publications, including lists of cultural institutions, directories of professional organizations and societies, and membership lists of a variety of special interest groups. This resource can be used to locate more specialized directories of organizations and individuals involved in the criminal justice and corrections fields. Entries are grouped by subject categories, and the publication includes a title and a subject index.

JOURNAL ARTICLES

Citations to journal articles and other materials about Federal correctional policies can be found in a number of printed indexes and online bibliographic databases.

The materials covered by selected printed indexes are briefly described here, along with recommended search terms for each. Printed indexes include lists of periodicals indexed and the abbreviations referring to these publications.

Online bibliographic databases are useful for locating citations to journal articles and other materials quickly through use of a computer. Online databases allow the researcher to combine search terms in ways that are impossible in a printed index or library catalog, and to simultaneously search material that would be contained in separate printed indexes covering several years. They also are updated more frequently than most printed tools. Many of the printed indexes described in this guide are also available as online databases.

Brief descriptions of some major online services providing access to bibliographic databases are provided. A reference librarian can advise you on the availability of computerized search services in your area; there is often a fee for the use of these services.

Magazine Index

Magazine Index provides citations to materials in over 400 popular magazines, focusing on coverage of current affairs, leisure time activities, arts, sports, and science and technology. References from the last five years are listed alphabetically by subject and author in one alphabetical display on the *Magazine Index* microfilm reader-terminal. The index is updated monthly, and uses Library of Congress subject headings.

Public Affairs Information Service (PAIS)

PAIS is a subject index of books, pamphlets, government publications, reports of public and private agencies, and periodical articles relating to political, economic, and social conditions, public administration, and international affairs. It is issued monthly; there are also three quarterly cumulations and an annual bound volume with an author index. Some search terms you may be able to use in *PAIS* include: Prisons, Correction (penology), Imprisonment, Sentences (law), Probation, Community-based corrections, Recidivists, and Social service--Work with prisoners.

Reader's Guide To Periodical Literature

The *Reader's Guide* is an author/subject index to over 180 periodicals of general interest published in the United States and Canada. It is published twice a month from September through December and in March, April, and June. It appears monthly in January, February, May, July, and August. Library of Congress subject headings are used to organize materials. The quarterly and annual cumulations can expedite your search of this index. Selected terms on corrections used in the *Reader's Guide* include: Prisons, Prisoners, Prison reform, Prison riots, and Prisoners--rehabilitation.

Index To Legal Periodicals

The *Index* lists articles "of high quality and permanent reference value" in legal periodicals published in the United States, Canada, Great Britain, and other English language countries. The articles are indexed under author and subject. A complete list of subjects is included at the front of each bound volume. Some useful terms include: Corrections, Prisons and prisoners, and Rehabilitation of offenders.

NEWSPAPER ARTICLES

New York Times Index

The *New York Times Index* provides extensive abstracts for articles appearing in the *New York Times*. It is issued twice a month, with quarterly and annual cumulations. Consult "How to use the New York Times Index" in the index volume itself for guidance. The primary term to consult in this index is Prisons and Prisoners.

Official Washington Post Index

The *Index* provides access to all substantial newsworthy items in the Washington Post, excluding wire service articles. It is issued monthly and cumulated annually. Some useful search terms include: Prisons; Imprisonment; Prisoners; Prison violence; Prison homicide; and Rehabilitation of criminals.

Wall Street Journal Index

The *Wall Street Journal Index* is issued monthly and has annual cumulations. Check in the General News section.

National Newspaper Index (microfilm)

National Newspaper Index indexes the *Christian Science Monitor*, *New York Times*, *Wall Street Journal*, *Los Angeles Times*, and *Washington Post*. References from the last five years are listed alphabetically by subject headings.

Other Newspaper Indexes

Bell & Howell Co. produces a set of indexes which list articles appearing in the *Boston Globe, Christian Science Monitor, Denver Post, Detroit News, Houston Post, Los Angeles Times, New Orleans Times-Picayune, San Francisco Chronicle, St. Louis Post-Dispatch*, and *USA Today*. University Microfilms International produces monthly and annual indexes for the *Atlanta Journal, Atlanta Constitution, Chicago Tribune, Los Angeles Times*, and the *Minneapolis Star and Tribune*. In addition, many newspapers are indexed locally; ask a librarian about indexes to your local newspaper.

ONLINE DATABASES

Many libraries now have access to computerized versions of many printed indexes. The information is stored in databases that can be accessed through personal computers. The advantages of using these computerized databases are search speed and flexibility; the disadvantages are the often high costs charged for access. Check with your local reference librarian to determine availability and costs of the systems listed below.

BRS

BRS is an online service providing primarily bibliographic information. This service has a heavier concentration of information in the humanities and social sciences than many of the other commercially available online services. The National Criminal Justice Reference Service database is available through BRS.

DIALOG

DIALOG Information Service is an online service that includes a wide variety of databases, ranging from newspaper and journal indexes through statistical references and airline information. Some of the indexes available on DIALOG include online versions of the National Newspaper Index, Washington Post, AP and UPI newswires, Magazine Index (with full-text of some articles). Two of the specialized resources mentioned in part two of this guide, the National Criminal Justice Reference Service and the Criminal Justice Periodical Index, are also available on DIALOG.

NEXIS

NEXIS is an online search and retrieval service that contains the full text of many newspapers, including the *New York Times*, the *Washington Post*, and the *Christian Science Monitor*; full text of major wire services, including AP, UPI, and Reuters; and full text of a number of magazines, newsletters, and government publications.

VUTEXT and DataTimes

Both of these online services index local and regional newspapers for most of the major metropolitan areas in the United States.

WilsonLine

The H. W. Wilson Company, which publishes the *Reader's Guide* to Periodical Literature, along with a number of other indexes to journal literature, has its own online service.

CD-ROM DATABASES

Some libraries have installed an alternative to print and online indexes, called CD-ROM. CD-ROM is a technology that allows a great deal of information to be stored on a compact disk that can be read by a personal computer. A number of indexes are available in this format, allowing searching capabilities similar to those available with online services, but without the charge per hour. Some of the indexes available in this format include ERIC, Magazine Index, and the Wilson indexes. Consult with your local reference librarian to determine whether this service is available in your area.

GOVERNMENT PUBLICATIONS

Federal Depository Library Program

This program makes Government publications available to designated depository libraries. In order to provide the greatest possible access to Government publications, depository libraries are located in each congressional district. There are currently over ???? depository libraries. Of this number, 50 have been designated as regional depositories. The regional libraries assume the responsibility of retaining depository material permanently, and of providing inter-library loan and reference service for their regions. Copies of documents no longer available for sale by the Government can usually be found in regional Federal depository library collections. Each issue of the *Monthly Catalog of United States Government Publications* (see below) prints a current directory of these regional libraries. A directory of all depository libraries is available from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Government Reports Announcements and Index

Government research reports are indexed in the *Government Reports Announcements and Index*, which is issued twice a month by the National Technical Information Service (NTIS). A keyword index lists significant words from titles. The *NTIS* index is available online through commercial systems.

Monthly Catalog of United States Government Publications

The *Monthly Catalog* lists documents issued by all branches of the Federal Government. The catalog has monthly, semiannual, and annual indexes, arranged by author, title, subject, keywords, and series/report title. It is an excellent tool for locating materials housed in depository libraries; it can also be used to obtain information about purchasing documents directly from the Superintendent of Documents at the U.S. Government Printing Office. The *Monthly Catalog* is available commercially, and through most libraries. The search terms used are the Library of Congress subject headings described in the section of this guide on books.

Weekly Compilation of Presidential Documents

This publication contains statements, messages, and other Presidential materials released by the White House during the preceding week. There are weekly, quarterly, and annual published indexes. This information is also available online commercially.

LEGISLATIVE INFORMATION

Congressional activities on U.S. policy regarding correctional institutions and programs may be monitored by searching the following printed publications:

Congressional Quarterly Weekly Report

This periodical provides current information on congressional activities, the status and progress of current legislation, and major policy issues. Recent articles of particular importance are indexed on the back cover of each issue. Consult this index under the heading Law/Judiciary. Quarterly and annual indexes are also issued; you may find information under the heading Prisons and Prisoners. Cross references are also provided.

Congressional Quarterly also publishes an annual volume which cumulates material from the weekly reports. There is an index at the back of each volume, which uses similar subject headings.

National Journal

National Journal is a monthly publication containing articles on executive branch and congressional activities. Toward the end of each issue there is a page entitled "Recent Articles." Use this page as an abbreviated index, looking under the term Legal Affairs. A semi-annual index is published which allows searching under more specific topics.

Congressional Record

The *Congressional Record* is an edited transcript of the activities on the floor of the U.S. House and Senate. An issue is published for each day that either branch of Congress is in session. Subject and name indexes are published biweekly and cumulated annually. Some topics to search under are Prisons and Correctional institutions.

BILLS AND RESOLUTIONS

Major Legislation of the Congress

The *MLC* provides summaries of selected major legislation arranged by subject. It includes background on the issues and information on the content and status of major bills affecting that issue. The publication may be examined at a depository library, or purchased from the Government Printing Office. Search under the heading Law, Crime, and Justice.

Digest of Public General Bills and Resolutions

The *Digest* summarizes the essential features of public bills and resolutions, and any changes made in them during the course of the legislative process. Two cumulative issues are published during each session of Congress, and a final issue is published at the conclusion of the session. The *Digest* includes information on sponsors and cosponsors of legislation, identical bills, short titles, and subject indexes.

CIS Index

The *CIS Index* is produced by the Congressional Information Service, and contains abstracts of all congressional publications except the *Congressional Record*. The index is published monthly, and cumulated quarterly and annually. Each issue of the index is divided into both index and abstract portions. Search in the index section under topics such as: Sentences, criminal procedure; Prisons; Rehabilitation of criminals.

Congressional Index

The *Congressional Index*, published by the Commerce Clearing House, is a weekly looseleaf service providing content and status information for bills and resolutions pending in Congress. The progress of bills and resolutions is reported, from the introduction of the legislation to the final disposition.

STATISTICAL SOURCES

American Statistics Index (ASI)

The *American Statistics Index* indexes and describes the statistical publications of the U.S. Government, including periodicals, annuals, biennials, semi-annuals, and special publications. It provides access to statistical materials by subject, organization, name, issuing source, and title. The index is published monthly and cumulated annually. *ASI* is also available through commercial online systems.

Statistical Abstract of the United States:
National Data Book and Guide to Sources

Published by the U.S. Department of Commerce, Bureau of the Census on an annual basis, this source includes pertinent statistical information under the subject "Law Enforcement, Courts and Prisons." This publication should be available in any depository library, as well as in the reference collections of most large public or academic libraries.

Statistical Reference Index

The *Statistical Reference Index* provides a guide and index to selected statistical reference material from non-Federal sources on a wide variety of topics. It includes the publications of trade, professional, and other non-profit associations and institutions, business organizations, commercial publishers, university and independent research centers, and State government agencies. Information can be accessed by subject, organization, name, issuing source, and/or title. The index is published monthly and cumulated annually.

PART II: REFERENCE SOURCES IN CRIMINAL JUSTICE AND CORRECTIONS

REFERENCE BOOKS

General

Beckman, Erik.
The criminal justice dictionary. Ann Arbor, MI, Pierian Press, 1983. 249 p.

Bundy, Mary Lee. Bell, Alice, eds.
The national prison directory: a prison reform organizational aid resource directory with a special section on public library service to prisoners. College Park, MD, Urban Information Interpreters, 1984. 205 p.
"Consists chiefly of organizational profiles of citizen groups and programs, legal organizations, and professional correctional associations; that is, it includes the types of non-governmental organizations which have a stake in improving the prison system."

Kadish, Sanford H., ed.
Encyclopedia of crime and justice. New York, Free Press, 1983. 4 v. (1790 p.)
Includes entries on correctional reform associations; punishment; jails; prisons; incapacitation; probation and parole; prisoners, legal rights of; rehabilitation; and correctional treatment.

Lundy, Christine.
Directory of criminal justice information sources. Washington, G.P.O., 1981. 142 p.
"This *Directory*, issued by the National Criminal Justice Reference Service (NCJRS) . . . to make known to all who are concerned with law enforcement and the criminal justice system the available resources and services of many agencies. Criminal justice professionals now have a centralized listing of services at their command to assist them as they address the challenges of our changing society."

Lutzker, Marilyn. Ferrall, Eleanor.
Criminal justice research in libraries: strategies and resources. Westport, CT, Greenwood Press, 1986. 167 p.
Partial contents.--Communication, information, and information flow.--Efficiency in research.--Bibliographic searching: computer and manual.--Encyclopedias, dictionaries, and annual reviews.--Newsletters, newspapers, and news broadcasts.--Documents, reports, and conference proceedings.--Indexes and abstracts.--The library catalog.--Statistics.--Printed bibliographies and guides to the literature.--Research in legal resources.--Historical research with primary sources: nineteenth-century America.--Resources for the study of criminal justice in other countries.--Selected lists of Library of Congress subject headings in criminal justice.--Some useful directories.--Selected major national commission reports.

Newton, Anne. Perl, Kathleen Yaskiw. Doleschal, Eugene.
Information sources in criminal justice: an annotated guide to directories, journals, newsletters. Hackensack, NJ, National Council on Crime and Delinquency, 1976. 164 p.

O'Block, Robert L.
Criminal justice research sources. Cincinnati, Anderson, 1986. 183 p.
"This handbook has been designed to be of value as a major reference text to any criminal justice course which requires outside assignments--from annotated bibliographies to major research projects. It also addresses the importance of information which can be obtained from private and community service agencies. Thus, students using this handbook will literally have hundreds of sources at their fingertips. The great majority of these sources have been annotated to further expedite the literature search . . . . Also included in the appendices section are explanations on how to begin to research the literature and how to organize the information obtained."

Rush, George E.
The dictionary of criminal justice. Guilford, CT, Dushkin Publishing Group, 1986. 312 p.
Includes summaries of Supreme Court cases affecting criminal justice, written by Judith Hails Kaci.

"Intended to compile in one reference volume information that could otherwise be found only through a tedious search through a myriad of interdisciplinary literature -- because the study of criminal justice and its processes cross, blend, and overlap several disciplines .... This dictionary represents an extensive effort to cover the terms associated with the wide spectrum of law enforcement, courts, probation, parole, and corrections and cites information and information sources peculiar to each."

Williams, Vergil L.
Dictionary of American penology: an introductory guide. Westport, CT, Greenwood Press, 530 p.
Students "will find a broad range of topics to introduce [them] to the variety of subjects germane to penology .... This reference work can serve as an introductory guide to students; by turning the pages, they can quickly learn how diverse the issues and numerous the subtopics in the field are. More important, the new student of penology can use this guide to learn the basic facts in the many areas of inquiry .... The concerned citizen interested in prisons and prison reform can use this guide to identify the issues in the field, to get some feel for reforms that are being instituted in various places in the system, and to locate other groups interested in improving prison conditions. The descriptions of the system are useful for this purpose .... The professional in the field will find this work to be a useful fact file identifying prison locations and capacities, outlining key arguments in controversies, and in general, providing a convenient reference for the hundreds of facts needed in the normal course of business.

Statistical Sources

Minor-Harper, Stephanie.
State and Federal prisoners, 1925-1985. Bureau of Justice Statistics bulletin, Oct. 1986: whole issue (7 p.)
"Presents 60 years of data on prison populations from the statistical series 'Prisoners in State and Federal Institutions'"

U.S. Bureau of Justice Statistics.
National prisoner statistics. Washington, G.P.O., 1926 - .
This information is published either as individual reports or as issues of the Bureau of Justice Statistics Bulletin. It provides statistics on prisoners in State and Federal institutions, and on jail inmates.

U.S. Bureau of Justice Statistics
Sourcebook of criminal justice statistics. Washington, G.P.O., 1973 - .
This annual publication is one of the most important compilations of statistics in criminal justice available. It presents statistics gathered from a variety of other sources, ranging from government agencies to public opinion polling firms. Includes chapters on "Persons Under Correctional Supervision," and "Judicial Processing of Defendants."

INDEXES, ABSTRACTS, AND CONTENTS SERVICES

Business Periodicals Index

Articles from over 300 business periodicals are listed in this index. It is published monthly, except for August, and a bound cumulation is issued each year. A wide range of business publications, such as *American Demographics*, the *Economist*, and *Barrons*, are indexed here. Use Library of Congress subject headings to search, along with the cross-references provided in the index.

Criminal Justice Periodical Index

Indexes over 100 U.S., British, and Canadian journals in the field of criminal justice. This index is issued in three parts each year: two non-cumulative softcover issues, and a yearly cumulative hardbound issue that supplements and replaces the softcover copies. An author index and a subject index are provided. Some subject terms to consult include: Corrections; Imprisonment; Jails; Prisons; Penal reform; Prison sentences; Alternative sentencing; and Prison administration.

Social Science Citation Index

This index, which covers hundreds of journals, is issued quarterly and annually. Unlike most other indexes, it does not have standard subject headings; instead, key words from an article's title are listed in the Permuterm Subject Index, and full citations are then provided in the Source Index.

Social Sciences Index

This index, which is published quarterly and cumulated annually, gives author and title access to articles from a range of journals in the social sciences, including criminal justice. Some of the public policy journals include articles on correctional problems and policies. Use Library of Congress subject headings, as well as the cross-references provided in the index, to search for information.

Criminal Justice Abstracts

This publication is issued quarterly, and includes in-depth abstracts to articles, books, reports, dissertations, and unpublished papers in the field of criminal justice. The main journals in the field are covered comprehensively; other materials receive broad coverage. Look for entries under the subject heading Corrections.

National Criminal Justice Reference Service Database (available online only)

The National Criminal Justice Reference Service database is available through DIALOG Information Service and BRS. The database contains citations to the document collection of the National Institute of Justice/NCJRS, the national and international clearinghouse of practical and theoretical information about criminal justice and law enforcement established by the U.S. Congress. Included are published and unpublished research reports, program descriptions and evaluations, books, dissertations, theoretical and empirical studies, handbooks and standards, journal articles, and audiovisual materials. Indexing of the collection is based on subject terms from the National Criminal Justice Thesaurus, also compiled by NCJRS. Searching of the database can be done through the DIALOG or BRS online systems; searches can also be arranged on a fee basis through the NCJRS (address listed later in this guide).

ABC Pol Sci (Advance Bibliography of Contents: Political Science and Government)

ABC Pol Sci is a guide to current periodical literature in the field of political science and government, as well as in the related disciplines of sociology, law, and history. This bibliography is published five times a year, and contains edited tables of contents of approximately 300 international journals.

SELECTED PERIODICALS

Journals on Corrections and Criminal Justice

Corrections Compendium
Corrections Digest
Corrections Magazine
Corrections Today
Crime and Delinquency
Criminal Justice and Behavior
Criminal Justice Issues
Criminal Justice Policy Review
Criminal Justice Review
Criminal Law Bulletin
Federal Probation
International Journal of Comparative and Applied Criminal Justice
Journal of Correctional Education
Journal of Criminal Justice
Journal of Criminal Law and Criminology
Journal of Offender Counseling
Journal of Offender Counseling, Services, and Rehabilitation
Journal of Prison and Jail Health
Journal of Research in Crime and Delinquency
Journal of the National Prison Project
New England Journal on Criminal and Civil Confinement (formerly New England Journal of Prison Law)
Prison Journal

Journals on the Judicial System

Judicature
Justice Quarterly
Justice System Journal

Journals on Social Sciences and Social Problems

Annals of the American Academy of Political and Social Science
Columbia Journal of Law and Social Problems
Journal of Applied Social Psychology
Policy Review
Policy Studies Review
Public Interest

Journals on Governmental Activities

American City and County
Public Administration Review
State Government News
State Legislatures

FEDERAL GOVERNMENT AGENCIES

This list includes the names and addresses of some Federal agencies which may be able to provide information to researchers on issues pertaining to correctional policies and reform.

Bureau of Justice Statistics Clearinghouse
c/o NCJRS
Box 6000
Rockville, MD 20850

This office will provide current statistical information from the Bureau of Justice Statistics, provide copies of some BJS documents and products, and suggest referrals to other sources for criminal justice statistics.

Data Center & Clearinghouse for Drugs & Crime
c/o NCJRS
1600 Research Boulevard
Rockville, MD 20850

Like the BJS Clearinghouse, this office will provide statistical information and referrals to other information sources; the focus of the information provided by this service is on drug use, but they do collect information on the impact of drugs on the criminal justice system.

Federal Bureau of Prisons
Office of Public Affairs
320 1st Street, NW
Washington, DC 20534

The Bureau of Prisons supervises operations of Federal correctional institutions, while the affiliated office of Justice Assistance provides grants to help states and localities build new prisons to relieve overcrowding. The Public Affairs staff have background information that can be sent out upon request.

U.S. Sentencing Commission
1331 Pennsylvania Avenue, NW
Washington, DC 20004

This commission researches and drafts Federal sentencing guidelines, which can have a substantial effect on overcrowding in Federal and State prisons.

U.S. Parole Commission
5550 Friendship Boulevard
Chevy Chase, MD 20815

The Parole Commission makes release and parole decisions for prisoners in Federal correctional institutions.

UNITED STATES GOVERNMENT PRINTING OFFICE
SUPERINTENDENT OF DOCUMENTS
WASHINGTON, D.C. 20402

SB-176
April 13, 1989

PUBLICATIONS RELATING TO THE 1989-90 HIGH SCHOOL DEBATE TOPIC

Resolved: Prison Reform: How Can the Federal Government Reform Prisons and Jails in the United States?

* *

___AIDS in Correctional Facilities: Issues and Options, 1986. *Describes the current range of correctional system practices related to AIDS and discusses some of the advantages and drawbacks of each approach. Also presents the basic facts on AIDS itself: how it is transmitted; how it is prevented; and how widespread it is in the general population and correctional population.* 1987: 251 p.
J 28.23:Ai 2/987 S/N 027-000-01291-4 $12.00

___Code of Federal Regulations, Title 28, Judicial Administration, Revised July 1, 1988. *Includes Parts 300-399, Federal Prison Industries and Parts 500-599, Bureau of Prisons.* 1988: 938 p.
AE 2.106/3:28/988 S/N 869-004-00103-7 25.00

___Microfiche of the above. 1988: 10 microfiche, 24X.
AE 2.106/3:28/988 MF
S/N 869-005-00103-3 3.75

___Criminal Justice Careers Guidebook. *Most of this book is comprised of individual criminal justice career descriptions; each of these includes information about job requirements and employment prospects. This book also includes a bibliography and a list of sources to contact for further information.* 1982: 184 p.; ill.
L 37.8:J 98 S/N 029-014-00200-3 7.00

___Criminal Justice: New Technologies and the Constitution. *Looks at new technologies used for investigation, apprehension, and confinement of offenders and examines their effects on the rights of the accused provided by the Constitution and the Bill of Rights. Discusses the use of polygraph testing, computerized data bases, DNA typing, and other technologies presently available to identify and apprehend criminals. Describes electronic monitoring, drug therapy, and hormone manipulation as alternatives to conventional prisons. These technological innovations are equally capable of enhancing or endangering democratic values.* 1988: 60 p.; ill.
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